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RELIEF OF DESERT LAND ENTRYMEN IN ARIZONA

HEARING
BEFORE THE
SUBCOMMITTEE ON
IRRIGATION AND RECLAMATION
OF THE
COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
UNITED STATES SENATE
EIGHTY-FOURTH CONGRESS
FIRST SESSION
ON
S. 1177
A BILL FOR THE RELIEF OF DESERT LAND ENTRYMEN
WHOSE ENTRIES ARE DEPENDENT UPON PERCO-
LATING WATERS FOR RECLAMATION

MAY 27, 1955

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RELIEF OF DESERT LAND ENTRYMEN IN ARIZONA

FRIDAY, MAY 27, 1955

UNITED STATES SENATE,
SUBCOMMITTEE ON IRRIGATION AND RECLAMATION
OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D. C.

The subcommittee met, pursuant to call, at 10 a. m., in room 224, Senate Office Building, Hon. Clinton P. Anderson (chairman of the subcommittee) presiding.

Present: Senator Anderson (presiding).

Present also: Senator Goldwater.

Present also: Goodrich W. Lineweaver, staff member for reclamation; Elmer K. Nelson, consulting engineer; and N. D. McSherry, assistant chief clerk.

Senator ANDERSON. The committee will be in order.

The bill we have under consideration is S. 1177.

(The bill referred to follows):

[S. 1177, 84th Cong., 1st sess.]

A BILL For the relief of desert land entrymen whose entries are dependent upon percolating waters for reclamation

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the requirement of section 1 of the Desert Land Act of March 3, 1877 (19 Stat. 377), that the right to the use of water by a desert land entryman "shall depend upon bona fide prior appropriation" shall be waived in the case of all desert land entries which have heretofore been allowed and are subsisting on the effective date of this Act, which are dependent upon percolating waters for their reclamation, and which are situated in States under the laws of which the percolating waters upon which the entries are dependent are not subject to the doctrine of prior appropriation

Senator ANDERSON. We will put in the record, following the text of S. 1177, the letter of April 12 from Donald R. Belcher, Assistant Director of the Bureau of the Budget, the letter of April 15 from Orme Lewis, Acting Secretary of Interior to Senator Murray, and the opinion of the Acting Solicitor of the Department. There are a number of definitions in the opinion dealing with the validity of desert land application entries in Arizona which it seems to me ought all go in the record. Therefore, we will incorporate all of these documents in the record at this point.

REPORTS OF BUDGET AND DEPARTMENT OF THE INTERIOR

(Reports of the Bureau of the Budget and the Department of the Interior are as follows:)

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington 25, D. C., April 12, 1955.

Hon. JAMES E. MURRAY,
Chairman, Committee on Interior and Insular Affairs,
United States Senate, Washington 25, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Bureau of the Budget with respect to S. 1177, for the relief of desert land entrymen whose entries are dependent upon pereolating waters for reclamation.

The Desert Land Act of March 3, 1877 (43 U. S. C. 321), requires that the right of desert land entrymen to the use of water for reclaiming their entries "shall depend upon bona fide prior appropriation." S. 1177 would waive this requirement in the case of desert land entries which have heretofore been allowed and are subsisting on the date of enactment of the bill, which are dependent upon pereolating waters for their reclamation, and which are situated in States where pereolating waters upon which the entries are dependent are not subject to the doctrine of prior appropriation.

Although the bill is written on a general basis, it is our understanding that the bill is directed at a problem which arose in Arizona as a result of a recent decision by the supreme court of that State. That decision has the effect of preventing certain desert land entries from going to patent. The circumstances are described in greater detail in the report which the Department of the Interior is making to your committee. Since the entries were applied for in good faith and the entrymen have apparently made expenditures and performed work with a view to securing patent to the entries, it would appear fair to provide relief to these entrymen.

This Bureau would have no objection to the enactment of S. 1177.

Sincerely yours,

DONALD R. BELCHER,
Assistant Director.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington 25, D. C., April 15, 1955.

Hon. JAMES E. MURRAY,
Chairman, Committee on Interior and Insular Affairs,
United States Senate, Washington 25, D. C.

MY DEAR SENATOR MURRAY: This is in reply to your request for the views of this Department on S. 1177, a bill for the relief of desert land entrymen whose entries are dependent upon pereolating waters for reclamation.

I recommend that S. 1177 be enacted.

Section 1 of the Desert Land Act of March 3, 1877 (43 U. S. C., 1952 ed., see. 321), requires that the right of desert land entrymen to the use of water for reclaiming their entries "shall depend upon bona fide prior appropriation." S. 1177, if enacted, would waive this requirement in the case of all desert land entries which have heretofore been allowed and are subsisting on the effective date of the statute, which are dependent upon pereolating waters for their reclamation, and which are situated in States under the laws of which the pereolating waters upon which the entries are dependent are not subject to the doctrine of prior appropriation.

During the past year, a question has arisen in the Department with respect to the meaning of this provision of the Desert Land Act and its effect upon desert land entries in the State of Arizona which are dependent for irrigation upon pereolating waters, i. e., underground water which does not flow in a well-defined channel with banks. The question arose primarily as a result of a recent decision by the Supreme Court of Arizona with respect to the law of the State governing pereolating waters. In that decision, *Bristor v. Cheatham* (75 Ariz. 227, 255 P. 2d 173), decided on March 14, 1953, the Arizona court held that pereolating waters in that State are not subject to the doctrine of prior appropriation but are subject only to the doctrine of reasonable use.

The Bristor decision raised the question whether desert land entries for lands in Arizona could be allowed or patented where such entries are dependent on pereolating waters for reclamation. The question was referred to the Acting Solicitor of the Department who has rendered an opinion holding that such entries cannot be allowed or patented under the Desert Land Act since the right of the entrymen or the applicants for entry to use pereolating waters does not depend

upon prior appropriation. A copy of the Acting Solicitor's opinion, M-36263, dated February 23, 1955, is attached. It discusses the problem in detail.

According to the Bureau of Land Management of this Department, there are approximately 158 desert land entries in Arizona which have been allowed and are currently subsisting but which are dependent on percolating waters for reclamation. The entries were applied for in good faith and the entrymen have apparently made expenditures and performed work with a view to securing patents to the entries. In many cases the expenditures have been substantial. However, under the law as set forth in the Acting Solicitor's opinion, the entries cannot go to patent so long as the percolating waters on which they are dependent are not subject to appropriation. This means that in time, as the statutory life of the entries expires, the entrymen will lose the fruits of their labor and expenditures. Immediately, because of this prospect, the entrymen are uncertain as to whether to proceed with their work on the entries.

In these circumstances, it seems only fair and equitable that the entrymen should be allowed to perfect their entries regardless of the requirement in the Desert Land Act that they have a water right dependent upon prior appropriation. S. 1177 would accomplish this purpose. It would simply waive in the case of these entries the requirement that the right to use of water depends on prior appropriation. In all other respects, such as reclamation and expenditures, the entrymen would remain subject to the requirements of the Desert Land Act.

The problem under consideration has so far arisen only in Arizona. S. 1177, however, has been drawn on a general basis and would thus take care of any similar problem in other States to which the Desert Land Act applies.

It should be noted that the bill applies only to existing entries which have been allowed. The bill will not permit future desert land entries to be made in Arizona which are dependent on percolating waters. Whether broader legislation should be enacted is a matter on which the Department takes no position at this time. The Department's immediate concern is in affording relief to existing entrymen who have an immediate problem on their hands, and the Department urges that such relief be granted without delay.

The Bureau of the Budget has advised that there is no objection to the submission of this report to the committee.

Sincerely yours,

ORME LEWIS,
Acting Secretary of the Interior.

ACTING SOLICITOR'S OPINION

(The opinion of the Acting Solicitor is as follows:)

M-36263

FEBRUARY 23, 1955.

VALIDITY OF DESERT LAND APPLICATIONS AND ENTRIES IN ARIZONA DEPENDENT ON PERCOLATING WATER FOR RECLAMATION

Desert land entry: Water right

When Congress provided in the Desert Land Act that the right to use of water by the entryman "shall depend upon bona fide prior appropriation," Congress used the words "prior appropriation" as words of art having reference to the well-established doctrine of prior appropriation then obtaining in the Western States and Territories.

Desert land entry: Water right

Whether water is subject to prior appropriation as required in the Desert Land Act is a matter governed by State law.

Water and water rights: State laws

Under the second opinion of the Arizona Supreme Court in the case of *Bristor v. Cheatham*, percolating waters are not subject to the doctrine of prior appropriation but only to the doctrine of reasonable use.

Desert land entry: Water right

Applications for desert land entries in Arizona cannot be allowed, and allowed desert land entries in that State cannot be patented, where the entries are dependent upon percolating waters for reclamation.

M-36263

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington 25, D. C., February 23, 1955.

Memorandum.

To: Director, Bureau of Land Management.

From: Acting Solicitor.

Subject: Validity of desert land applications and entries in Arizona dependent on percolating water for reclamation.

You have requested my opinion as to whether, in view of the decision by the Supreme Court of Arizona in the case of *Bristor v. Cheatham* (75 Ariz. 227, 255 P. 2d 173 (1953)), applications for desert land entries in that State can be allowed or allowed desert land entries in that State can be patented where reclamation of the entry depends upon percolating water.

As the term "percolating water" is used in your request and this opinion, it means underground water which does not comprise or is not part of an underground stream which has a well-defined channel and banks and a current.

Section 1 of the Desert Land Act of March 3, 1877 (43 U. S. C., 1952 ed., sec. 321), provides in part as follows:

"* * * it shall be lawful for any citizen of the United States * * * to file a declaration * * * that he intends to reclaim a tract of desert land * * * by conducting water upon the same * * *: *Provided, however,* That the right to the use of water by the person so conducting the same * * * shall depend upon bona fide prior appropriation: * * * and all surplus water over and above such actual appropriation and use, together with the water of all, lakes, rivers and other sources of water supply upon the public lands and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, mining, and manufacturing purposes subject to existing rights" (19 Stat. 377).

The answer to your question depends upon the interpretation to be given to the specific portion of the quotation from the act which requires that "the right to the use of water by the person so conducting the same * * * shall depend upon bona fide prior appropriation."

In *California-Oregon Power Co. v. Beaver Portland Cement Co.* (295 U. S. 142 (1935)), the United States Supreme Court held that a homestead patent issued in 1885 for land bordering on a stream did not carry with it the common law riparian right to have the stream flow by the land in its accustomed channel without substantial diminution. This holding was based on the Court's interpretation of the provision of section 1 of the Desert Land Act following the clause just quoted and beginning with "and all surplus water," etc. Although the Court was not directly concerned with the clause under consideration here, it discussed at length the background of the Desert Land Act and made a number of statements which are very illuminating with respect to the point at issue. The more significant statements follow:

"For many years prior to the passage of the act of July 26, 1866 * * * the right to use of waters for mining and other beneficial purposes in California and the arid region generally was fixed and regulated by local rules and customs. The first appropriator of water for a beneficial use was uniformly recognized as having the better right to the extent of his actual use. The common law with respect to riparian rights was not considered applicable, or, if so, only to a limited degree. * * * The rule generally recognized throughout the States and Territories of the arid region was that the acquisition of water by prior appropriation for a beneficial use was entitled to protection * * *" (p. 154). [Emphasis added.]

"That body [the Congress] thoroughly understood that an enforcement of the common-law rule, by greatly retarding if not forbidding the diversion of waters from their accustomed channels, would disastrously affect the policy of dividing the public domain into small holdings and effecting their distribution among innumerable settlers. In respect of the area embraced by the desert-land States, with the exception of a comparatively narrow strip along the Pacific seaboard, it had become evident to Congress, as it had to the inhabitants, that the future growth and well-being of the entire region depended upon a complete adherence to the rule of appropriation for a beneficial use as the exclusive criterion of the right to the use of water" (p. 157). [Emphasis added.]

"In the light of the foregoing considerations, the Desert Land Act was passed, and in their light it must now be construed" (p. 158).

These extracts from the Power Co. case leave little doubt that the rule of prior appropriation was a well-established doctrine of water law in the Western States and Territories at the time the Desert Land Act was passed and that, when

Congress provided in the act that the right to use of water by a desert land entryman "shall depend upon bona fide prior appropriation," Congress used the words "prior appropriation" as words of art having a clear and precise meaning.

The question then presents itself whether the right to appropriate water for the reclaiming of a desert land entry is a matter governed by State law or Federal law. The Power Co. case provides the answer. The Court stated in that case:

"As the owner of the public domain, the Government possessed the power to dispose of land and water thereon together, or to dispose of them separately. * * * The fair construction of the provision now under review¹ is that Congress intended to establish the rule that for the future the land should be patented separately; and that all nonnavigable waters thereon should be reserved for the use of the public *under the laws of the States and Territories named*" (p. 162). [Emphasis added.]

"Nothing we have said is meant to suggest that the [Desert Land] act, as we construe it, has the effect of curtaining the power of the States affected to legislate in respect of waters and water rights as they deem wise in the public interest. What we hold is that following the act of 1877, if not before, all nonnavigable waters then a part of the public domain became publicijuris, *subject to the plenary control of the designated States*, including those since created out of the Territories named, with the right in each to determine for itself, to what extent the rule of appropriation or the common-law rule in respect of riparian rights should obtain. * * * The Desert Land Act does not bind or purport to bind the States to any policy. It simply recognizes and gives sanction, insofar as the United States and its future grantees are concerned, to the State and local doctrine of appropriation, and seeks to remove what otherwise might be an impediment to its full and successful operation" (pp. 163-164). [Emphasis added.]

It is clear, then, that whether a desert land entry in Arizona can be based upon percolating water depends upon whether, under the law of Arizona, percolating water is subject to the doctrine of prior appropriation.

This question was settled only relatively recently in the case of *Bristor v. Cheatham*, supra. To appreciate the full significance of that case, a brief consideration of the history of the Arizona law on percolating water is necessary. The first pronouncement by the Arizona Supreme Court on the subject of percolating water apparently was in the case of *Howard v. Perrin* (76 Pac. 460 (1904), aff'd 200 U. S. 71 (1906)). In that case, the court stated that percolating water, as distinguished from water in an underground stream, belonged to the owner of the soil and was not subject to appropriation by another.

In *Maricopa County Municipal Water Conservation District No. 1 et al. v. Southwest Cotton Co. et al.* (4 P. 2d 369 (1931)), the Arizona court decided to treat the subject of underground water as a matter of first impression. In a lengthy opinion, the court concluded that "our holding in *Howard v. Perrin*, supra, that percolating subterranean waters were not subject to appropriation, was and still is the law of Arizona" (4 P. 2d, at p. 376).

Then came the case of *Bristor v. Cheatham*. This was an action by the plaintiffs to restrain the defendants from diverting water which the plaintiffs were pumping from domestic wells on their property. The plaintiffs alleged as a first count that the defendants had sunk a number of large wells on defendants' property to a common source of underground water underlying the lands of both and were pumping and conveying the water 3 miles distant to reclaim other land owned by the defendants, and that this withdrawal of water was drying plaintiffs' wells. In a second count, the plaintiffs alleged that the waters from which their wells were supplied were taken from an underground stream. The action was dismissed on both counts by the lower court.

When the case came before the Supreme Court of Arizona, the court first held on January 12, 1952, that its ruling in *Howard v. Perrin* was dictum and contrary to the Desert Land Act; it overruled that case and held that percolating waters are subject to the doctrine of prior appropriation (*Bristor v. Cheatham*, 240 P. 2d 185). A rehearing was granted, following which the court reversed itself on March 14, 1953 (255 P. 2d 173). The court said:

"The State of Arizona through its legislature has adopted its policy and local doctrine to the effect that ground waters are not subject to appropriation. It seems the only answer, therefore, is that a prior right to the use of ground waters cannot now be acquired and never could have been acquired under the law of *prior appropriation*. We hold, therefore, that such waters are not subject to *any law of appropriation*" (255 P. 2d, at p. 177). [Emphasis added.]

¹ The clause in sec. 1 of the act commencing with "and all surplus water," etc.

The court went on to hold that the owner of land overlying percolating water has a right to use the water subject to the doctrine of reasonable use, as distinguished from the doctrine of correlative rights. Under the latter doctrine, a landowner would be limited to his proportionate share of the percolating water underlying his land and the lands of his neighbors. Under the doctrine of reasonable use, a landowner may use, without any liability to an adjoining user, as much of the percolating water as he can reasonably put to a beneficial use on his land even though it exceeds his proportionate share of the water. See 55 A. L. R. 1385 and 109 A. L. R. 395.

It is plain from the two opinions in the *Bristor* case that the doctrine of prior appropriation is diametrically opposed to the doctrine of reasonable use. Under the first doctrine, a prior appropriator acquires a legal right to a definite quantity of water which cannot be diverted by any subsequent appropriator even though the latter could put the water to a beneficial use. Under the second doctrine, a prior user of water acquires no right to the quantity of water used. Any subsequent user of water, by drilling a larger well or installing a more powerful pump, can, without liability, drain him dry so long as the water is put to a beneficial use by the subsequent user.

I find it impossible therefore to interpret the clause in the Desert Land Act which requires that "the right to the use of water * * * shall depend upon bona fide prior appropriation" as encompassing the doctrine of reasonable use as set forth in the second *Bristor* opinion.

The Department's regulations do not sanction the allowance or patenting of a desert land entry which depends upon percolating water which is subject only to the doctrine of reasonable use. The pertinent regulation currently in effect (43 CFR 232.13; 19 F. R. 9084), which has been unchanged since its adoption on May 18, 1916 (Circular 474, 45 L. D. 345, 351), provides in part as follows:

"SEC. 232.13 *Evidence of water rights required with application.* No desert-land application will be allowed unless accompanied by evidence satisfactorily showing either that the intending entryman has already acquired by appropriation, purchase, or contract a right to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought, or that he has initiated and prosecuted, as far as then possible, appropriate steps looking to the acquisition of such a right. * * * All applications not accompanied by the evidence above indicated will be rejected."

The requirement in the regulation is clear that an applicant must acquire, or take steps to acquire, a legal right to the permanent use of sufficient water to reclaim his entry. The same requirement is stated in the regulation dealing with the submission of final proof (43 CFR 232.32; 19 M. R. 9086).

As we have seen, a landowner has no legal assurance of a permanent supply of water under the doctrine of reasonable use. His "right" to use percolating water, unlike the right of a prior appropriator, is always subject to diminution or abrogation by a subsequent user of the water.

It is my opinion, therefore, upon the basis of the Desert Land Act and the second opinion of the Supreme Court of Arizona in *Bristor v. Cheatham*, that an application for a desert land entry on land in Arizona cannot be allowed, and that a patent cannot be issued for such an entry which has been allowed, where the entry is dependent upon percolating water for reclamation.

J. RUEEL ARMSTRONG,
Acting Solicitor.

Senator ANDERSON. I have a letter from Senator Hayden on this bill which I will insert in the record at this point:

UNITED STATES SENATE,
COMMITTEE ON APPROPRIATIONS,
May 27, 1955.

Hon. CLINTON P. ANDERSON,
Committee on Interior and Insular Affairs,
United States Senate, Washington 25, D. C.

DEAR SENATOR ANDERSON: This morning your subcommittee will have testimony on my bill (S. 1177) for the relief of desert land entrymen whose entries are dependent upon percolating waters for reclamation. I appreciate your invitation to me to present testimony in favor of this measure, and regret that the necessity of presiding at an appropriation hearing prevents my appearance. I have asked my administrative assistant to attend in my stead.

As you know, S. 1177 will benefit a maximum of 158 desert land entrymen who have performed in good faith everything that is required of them to secure patents

to public land in Arizona under the Desert Land Act of 1877. Before patents could issue, however, the Solicitor of the Department of the Interior held that patents could not issue for the reason that a decision of the Supreme Court of Arizona in 1953 (*Bristor v. Cheatham*, 240 P. 2d 185) held that in Arizona percolating waters are not subject to the doctrine of prior appropriation. The Solicitor, on the basis of this court decision, and the provision of the Desert Land Act that the right to use of water by a desert land entryman "shall depend upon a bona fide prior appropriation," reached the conclusion set forth in his opinion.

The entrymen affected by this bill have expended sizable sums in perfecting their entries, and completed all requirements before issuance of the Solicitor's opinion. Therefore, it seems to me that fairness and equity dictate the issuance of patents to them. I sincerely urge your subcommittee and the full Committee on Interior and Insular Affairs to approve S. 1177.

With best regards, I am,

Yours very sincerely,

CARL HAYDEN.

Senator ANDERSON. Senator Goldwater, do you wish to make a statement?

STATEMENT OF HON. BARRY GOLDWATER, UNITED STATES SENATOR FROM THE STATE OF ARIZONA

Senator GOLDWATER. This is Senator Hayden's bill. I am co-sponsor with him. Senator Hayden's administrative assistant, Paul Eaton, is here and would like to testify on the bill.

STATEMENT OF PAUL EATON, ADMINISTRATIVE ASSISTANT TO SENATOR HAYDEN

Mr. EATON. My name is Paul R. Eaton, administrative assistant to Senator Hayden. The Senator and Senator Goldwater introduced this bill as a relief bill. On February 23, the Solicitor of the Department of the Interior in a memorandum opinion, which is on governing the Bureau of Land Management and the Department, determined that desert land entries in Arizona under the Desert Land Act of 1877 could not be allowed if they were dependent upon percolating water because the Desert Land Act requires the bona fide prior appropriation of water which the Supreme Court of Arizona has said is not applicable to percolating water, water not in defined underground channels.

There are a maximum of about 158 desert land entries affected by this bill. They are all land entries which had been approved right up to the point of patenting at the time the Solicitor's opinion was rendered and before the land entrymen knew that this opinion would be given or would be effective. So the purpose of the bill is merely to take care of those people who have complied with all the requirements of the desert land law, and the Department at that time felt they had complied. It will not effect any entry which had not proceeded to the point of allowance at the time of the Solicitor's opinion. The act says "at the time of enactment," which is really synonymous because none are being allowed now. Actually, no further action has been taken on any desert land entries that are dependent upon percolating water for their reclamation.

Senator ANDERSON. They would have to divert water from a stream or drill a well of some kind?

Mr. EATON. That is correct.

Senator ANDERSON. Are these people doing either one of those things?

Mr. EATON. All are affected, as I understand it, are lands that are dependent upon well water.

Senator ANDERSON. There is no question about the right of a person to have a desert entry when he himself develops well water?

Mr. EATON. Yes; apparently if that water is not taken from a defined underground channel. If it is what they describe as percolating water, not within a defined channel, the supreme court in Arizona—now, I am getting where I should not be in a legal matter—has determined in the famous Arizona case of *Bristor v. Cheatham* that you cannot acquire a bona fide right to underground percolating water.

Senator ANDERSON. Can anyone tell me the difference between percolating water and ditch water?

Senator GOLDWATER. There is quite a difference.

Senator ANDERSON. There must be.

Senator GOLDWATER. All of our underground waters are considered percolating waters. The only difference is that it comes up instead of flowing horizontally. That is one of the confusing acts of 1877, because when the act was passed underground water was considered to be a stream and had the same rights as a surface stream. In Arizona, while our hydrographers tell us there is no such a thing as percolating water, the supreme court says it is percolating water. The case mentioned by Mr. Eaton is the case that created this confusion out there.

Senator ANDERSON. There are how many of these?

Mr. EATON. A maximum of 158, Mr. Chairman. There may be a few less than that. The State office of the Bureau of Land Management has furnished that number and has qualified it by saying that there may be a few which they were not able to tell us about at the time we requested information that will be dependent upon surface water. I do not know where it would be.

Senator ANDERSON. How much land is involved in this?

Mr. EATON. It is usually 320 acres per entry, so it would be 158 times that as a maximum.

Senator ANDERSON. Fifty thousand acres at the most?

Mr. EATON. I believe that is right, sir.

Senator ANDERSON. What will they pay the Government for that land?

Mr. EATON. A total of \$1.25 per acre when patent issues. In addition there is an improvement requirement of a minimum of \$1 per year per acre from the time they make their entry and begin improving upon it until it is allowed. I believe it is 4 years, but I am not certain about that figure.

Senator ANDERSON. Where is that land located?

Mr. EATON. It is not in any one area, sir; it is scattered in the valleys in central and southern Arizona.

Senator ANDERSON. In other words, will it be worth \$500 an acre when they get through with it?

Mr. EATON. I do not know. It will be worth quite a bit per acre if their underground water holds out so that they have what would be a permanent supply.

Senator ANDERSON. I am trying to find out what type of land that is. A lot of that Arizona land has been selling as high as \$1,000 an acre and a great deal at \$500 an acre. I am trying to find out whether

we are dealing with 50,000 acres worth \$500 or \$1,000 an acre, or \$100 an acre.

Senator GOLDWATER. Mr. Chairman, this is just an estimate. As an overall average, after the improvement costs have been paid and the deep well has been put in, this land should be worth something between four and five hundred dollars an acre. The land could go to \$1,000 an acre today only with high productivity of cotton, which we have no chance of out there as you know under the existing law. I would say four to five hundred dollars would be a pretty fair price for this. That would probably give the developer, if he wanted to sell it for speculative purposes, a profit of \$100 to \$150 an acre.

Senator ANDERSON. But we are dealing with something in the neighborhood \$25 million in this.

Senator GOLDWATER. Not that high.

Senator ANDERSON. Fifty thousand acres at \$500 an acre is \$25 million.

Senator GOLDWATER. Yes, if it all could be developed. There is a lot of that desert entry land that is not developed and probably will not be developed because the people that have it do not have the money to put down wells. It costs today from twenty to fifty thousand dollars, and employing grading and other equipment to improve it.

Senator ANDERSON. The original purpose of the desert entry was by flowing water or by diverting water from some place and putting it upon land. I know, I had a desert entry. I would have loved to have pumped it, but I lost mine because we were not able to take the water from the stream we thought we could take it out of. We had 10,000 acres to develop, and we lost whatever we put in the project because it was not regarded as proper to pump it.

Mr. EATON. That is somewhat the situation these people are going to find themselves in, except that before allowance of these land entries the Geological Survey and other hydrographers have been there and have determined that there is water available at least for the irrigable acreage within the entry. All the 320 acres on each entry is not necessarily irrigable, and usually a portion of it is not.

Senator ANDERSON. Anyway, the matter here has been carefully briefed and can be studied. I assume the staff will give it some study.

Do you have any further statements, Senator Goldwater?

Senator GOLDWATER. No, sir. I have a statement I would like to submit for the record and also the memorandum from the Solicitor to the Director of the Bureau of Land Management on this subject. I would like that to be made a part of the record.

(The memorandum referred to appears on p. 4.)

(The statement referred to by Senator Goldwater follows:)

FACTUAL DATA

Section 1 of the Desert Land Act of March 3, 1877 (43 U. S. C., 1952 ed., sec. 321), requires that the right of desert land entrymen to the use of water for reclaiming their entries "shall depend upon bona fide prior appropriation." During the past year, a question has arisen in the Department with respect to the meaning of this provision and its effect upon desert land entries in the State of Arizona which are dependent for irrigation upon percolating waters; i. e., underground water which does not flow in a well-defined channel with banks. The question arose primarily as a result of a recent decision by the Supreme Court of Arizona with respect to the law of the State governing percolating waters. In that decision, *Bristor v. Cheatham* (75 Ariz. 227, 255 P. 2d 173), decided on March 14,

1953, the Arizona court held that percolating waters in that State are not subject to the doctrine of prior appropriation but are subject only to the doctrine of reasonable use.

The *Bristor* decision raised the question whether desert land entries for lands in Arizona could be allowed or patented where such entries are dependent on percolating waters for reclamation. The question was referred to the Acting Solicitor of the Department who has rendered an opinion holding that such entries cannot be allowed or patented under the Desert Land Act since the right of the entrymen or the applicants for entry to use percolating waters does not depend upon prior appropriation. A copy of the Acting Solicitor's opinion M-36263, February 23, 1955, is attached. It discusses the problem in detail.

According to the Bureau of Land Management of this Department, there are approximately 160 desert land entries in Arizona which have been allowed and are currently subsisting but which are dependent on percolating waters for reclamation. The entries were applied for in good faith and the entrymen have apparently made expenditures and performed work with a view to securing patents to the entries. In many cases the expenditures have been substantial. However, under the law as set forth in the Acting Solicitor's opinion, the entries cannot go to patent so long as the percolating waters on which they are dependent are not subject to appropriation. This means that in time, as the statutory life of the entries expires, the entrymen will lose the fruits of their labor and expenditures. Immediately, because of this prospect, the entrymen are uncertain as to whether to proceed with their work on the entries.

In these circumstances, it seems only fair and equitable that the entrymen should be allowed to perfect their entries regardless of the requirement in the Desert Land Act that they have a water right dependent upon prior appropriation. The proposed bill would accomplish this purpose. It would simply waive in the case of these entries the requirement that the right to use of water depend on prior appropriation. In all other respects, such as reclamation and expenditures, the entrymen would remain subject to the requirements of the Desert Land Act.

Although the problem under consideration has arisen only in Arizona, the proposed bill has been drawn on a general basis to take care of any similar problem in other States to which the Desert Land Act applies.

It should be noted that the proposed bill applies only to existing entries which have been allowed. The bill will not permit future desert land entries to be made in Arizona which are dependent on percolating waters. Whether broader legislation should be enacted is a matter on which the Department takes no position at this time. The Department's immediate concern is in affording relief to existing entrymen who have an immediate problem on their hands. The Department, therefore, suggests that changes toward broadening the bill should not be made if they will have the effect of delaying or impeding the passage of the legislation.

Senator GOLDWATER. I would like to call the chairman's attention to the fact that several States might ultimately be affected by this decision. In North and South Dakota, the question is moot in these States because there have been no applications. They do not have the prior appropriation doctrine on underground percolating water. In Montana there is no prior appropriation doctrine. In Colorado the presumption is that all underground water is stream. The prior appropriation applies to underground streams, and this applies to Arizona.

In California the question is presently before the legislature. Two thousand applications are being held up. In Oregon, west of the Cascades, there is no prior appropriation. East of the Cascades, prior appropriation is recognized.

That is all I have, Mr. Chairman.

Mr. Chairman, I might say Mr. Woolley is here with some of his staff if you have some questions on this.

Senator ANDERSON. What is the attitude of Land Management?

**STATEMENT OF EDWARD WOOZLEY, DIRECTOR, BUREAU OF
LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR**

Mr. WOOZLEY. We are in favor of this bill, Senator. We have been issuing patents out there where people have qualified for patents, and these 158 desert land entries have been allowed with the assumption they would be able to qualify. With this decision it is doubtful that they could. It is almost a foregone conclusion that they could not.

Senator ANDERSON. Then why would you issue a patent?

Mr. WOOZLEY. We have assumed up until the time of the Supreme Court decision and the Solicitor's opinion was made that Arizona was the same as other States. Appropriation of water was permitted and that they were given the proper length of time to develop that water.

Senator ANDERSON. But you would not allow a desert entry in New Mexico for pumping?

Mr. WOOZLEY. Yes, sir; we allow desert entries for pumping.

Senator ANDERSON. When?

Mr. WOOZLEY. I might ask Mr. Hochmuth if we have allowed some.

STATEMENT OF HAROLD D. HOCHMUTH

Mr. HOCHMUTH. Yes, sir; in areas that are noncritical.

Senator ANDERSON. What are noncritical?

Mr. WOOZLEY. The State engineer tells us in New Mexico which are the areas and issues the necessary permits, and we then act.

Senator ANDERSON. What is a critical area?

Mr. WOOZLEY. That is an area declared by the State engineer that the ground water is fully appropriated already or is being overpumped.

Senator GOLDWATER. I might say we follow that same practice in Arizona.

Mr. HOCHMUTH. But the New Mexico law is quite clear as to a doctrine of prior appropriation, as I understand it. The Arizona law we thought was until the supreme court decision.

Senator ANDERSON. Then do I understand that in the area around Deming, N. Mex., you are granting desert entries?

Mr. HOCHMUTH. I am trying to search my memory, Senator. I might say it is declared by critical ground water by the State engineer of New Mexico, in which case we cannot allow desert entries because the State engineer will not give those people a permit to drill.

Senator ANDERSON. The Rio Grande is also critical?

Mr. HOCHMUTH. I cannot answer that.

Mr. WOOZLEY. I would like to point out that in my own State of Idaho in the last 4 years there has been approximately half a million acres developed from ground water irrigation. It is not a problem up there because percolating waters are allowed for desert entries. This law is particularly slanted toward Arizona and not to other States, as far as we can determine.

Senator ANDERSON. But it is your testimony that the same situation that stops the desert entryman from getting his land in Arizona permits him to have it in Idaho. The law of Idaho is such that he can do exactly the same thing in Idaho and get his land that he is seeking to do in Arizona where he cannot get it?

Mr. WOOZLEY. Yes, sir. The difference is in the State law.

Mr. HOCHMUTH. May I say something, Mr. Chairman?

Senator ANDERSON. Yes.

Mr. HOCHMUTH. This bill here only takes care of the persons who have been permitted to go on the land and exercise the right of desert-land entry. It does not take care of those 700 applications we have before the Bureau now that we have not allowed to go on the land yet. They will have to be rejected because the State law of Arizona does not permit us to allow those. But these people have made extensive improvements. I understand that some have gone as high as \$50,000 or \$100,000 for one tract. The bill only takes care of those which we have already permitted to enter.

Senator ANDERSON. Do I understand, then, that if this law is passed it will be limited to 158 and you will not issue any more?

Mr. HOCHMUTH. We are rejecting the others right now because the law does not permit us to do so.

Senator ANDERSON. Then you can answer my question directly. You will not grant any more than this 158?

Mr. HOCHMUTH. That is correct. We will not grant any more until either other legislation is passed or the State law is changed.

Senator ANDERSON. These people who are involved in this have been permitted by you to go on the land?

Mr. HOCHMUTH. Yes, sir.

Senator ANDERSON. Then having been permitted to go on the land, they have made improvements?

Mr. HOCHMUTH. Yes, sir.

Senator ANDERSON. In some cases, substantial improvements?

Mr. HOCHMUTH. Yes, sir.

Senator ANDERSON. Therefore, it is a hardship matter and not just a matter of granting somebody a right that might not otherwise have any interest in this at all?

Mr. HOCHMUTH. That is correct. I will go on to add to that that they still must meet with the other requirements of the Desert Land Act which means the expenditure of certain sums.

Senator ANDERSON. You do not mind spending \$4 an acre to get something worth \$500. That is fairly evident. If they have made an application in good faith and you allowed them to go on there, they could not anticipate the decision of the Arizona Supreme Court.

Mr. HOCHMUTH. That is a correct statement.

Mr. EATON. As a matter of fact, this decision is a reversal of the decision that the supreme court in the same case had given 1 year before.

Senator ANDERSON. When was this decision handed down?

Mr. EATON. In 1953 is the last one. There are two decisions; the first one was in 1952 and the second one on a rehearing was in 1953. It is exactly opposite from the 1952 decision. So they actually had something to go on for that period, at least as of 1952.

Senator GOLDWATER. I have an additional statement in the form of a letter from Mr. Armstrong to Senator Hayden explaining some of the western laws regarding the situation, which should go in the record, please.

Senator ANDERSON. Very well.

(The material referred to follows):

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, D. C. May 24, 1955.

HON. CARL HAYDEN,
United States Senate, Washington, D. C.

MY DEAR SENATOR HAYDEN: Further reference is made to your letter of April 5 requesting our comments on Mr. Coker's letter to you of March 30, concerning the water rights showing required for an entry of public lands in Arizona under the desert land law (43 U. S. C., sec. 321, et seq.).

Solicitor's opinion M-36263, a copy of which is enclosed, stated that where such entry would be dependent upon percolating water for reclamation, an application for entry or patent under the desert land law cannot be allowed. Under the desert land law, the right to use water on public land depends upon bona fide prior appropriation under the state law. The applicant must show he has acquired or will acquire by appropriation, purchase, or contract a right to the permanent use of sufficient water to irrigate and reclaim the public lands (43 CFR 232.13 and 232.32). The recent decision of the Supreme Court of Arizona in *Bristor v. Cheatham* (255 P. (2d) 173 (1953)) held that rights to percolating waters in Arizona cannot be acquired under the law of prior appropriation. That decision declares the law of the State with respect to this question. The applicant clearly cannot meet the requirements of the desert land law, therefore, if his entry depends on percolating water in Arizona.

Mr. Coker states in his letter that this Department has in the past interpreted the desert land law as permitting the showing of a water right dependent upon percolating waters. He finds evidence of such an interpretation from a Government annual proof form which gives credit toward meeting the requirements of the desert land law for expenditures made to construct windmills, pumps, and irrigation wells. The annual proof form does indicate acceptable types of improvement expenditures, but does not show what an applicant must prove with respect to his legal right to a definite quantity of water. No decision of this Department has been found holding that a desert land entry dependent on percolating waters may be allowed in a State which does not recognize appropriation of such waters. Our opinion M-36263, it should be noted, did not state that ground water obtained from wells in Arizona could never be used as the basis for an acceptable water right showing. Ground water is defined as including water in the ground, that is, under the surface (Selected Problems in the Law of Water Rights in the West, U. S. Department of Agriculture, Miscellaneous Publication No. 418, 1942, at p. 24). In Arizona, as in almost every other Western State, water in defined channels of underground streams is subject to prior appropriation and therefore can be used to establish a showing of the water right needed under the desert land laws.

There is little doubt that at the time of the enactment of the Desert Land Act on March 3, 1877, the doctrine of appropriation was well recognized. See *California Oregon Power Co. v. Beaver Portland Co.* (295 U. S. 142, 154 (1935)). The recognition of "prior appropriation" in the Desert Land Act, moreover, does not limit the doctrine to surface water.

Mr. Coker's statement that the "laws in the Western States in 1916 or thereabouts, will disclose that none of them had any provisions in their code for the appropriation of ground or percolating water" is not entirely accurate. Section 4169, Revised Statutes 1901, Arizona authorized prior appropriation of "any of the unappropriated waters" in the territory. This section was carried over into Revised Statutes 1913, section 5337. In 1919, it was definitely provided that ground water in definite underground channel was subject to appropriation (Arizona Code Annotated 1939, 75-101). The 1919 act confirmed the law of Arizona recognized prior to and after 1916, as indicated by the case cited by Mr. Coker of *Howard v. Perrin* (76 Pac. 460, 462 (1904)) upheld by the United States Supreme Court (200 U. S. 71 (1905)), and reaffirmed by *Maricopa County Municipal Water Conservation District No. 1 v. Southwest Cotton Co.*, (39 Arizona 65, 4 P. (2d) 369, 376 (1931)). The decisions of the State courts, of course, are declarative of the law of the State, (*Bristor v. Cheatham*, 255 P. (2d) 173, 175 (1953)).

In 1899, Idaho enacted a law providing that the right to the use of subterranean waters may be acquired by appropriation, (Idaho Code, 1948, sec. 42-103). In 1913, the Nevada statute provided that "all sources of water supply within the boundaries of the State, whether above or beneath the surface of the grounds" may be appropriated as provided in the act, (Nev. Comp. Laws, 1929, secs. 7890 and 7891). In 1915 a statute provided that "all underground waters, save and except percolating water" were subject to appropriation, (Nev. Sess. Laws

1915, sec. 1, ch. 210, p. 323). A Utah statute in 1903 (Utah Comp. Laws, 1907, sec. 1288-18) made water flowing above or under the ground in known or defined channels public property. The appropriation doctrine was held applicable in Utah to such water, (*Whitmore v. Utah Fuel Co.* 73 Pac. 764, 767 (1903)).

Mr. Coker also suggests amending the Desert Land Act to "settle the question as to the use of irrigation well or percolating waters for the reclamation of desert lands, whether the States have passed any ground-water legislation or not." Whether Federal legislation, even as to percolating water, is necessary or desirable is an important consideration. The State of Arizona can make such provision as it thinks wise for the acquisition of rights to percolating water on public or other lands in the State. There are decided advantages to the present provisions of the desert land law which assure the acquisition by the applicant of the supply of water necessary for desert land entry, and leave up to the State the method of such acquisition. This letter, of course, attempts only to clarify the problem raised, and is not intended to indicate what views this Department might express on a specific bill if the Department were called upon to report on such legislation.

Sincerely yours,

J. REUEL ARMSTRONG, *Solicitor.*

Mr. EATON. Senator Hayden said that he is sorry he could not be here today. He had four subcommittee hearings today. He could get out of three of them but not the fourth, so he sent to you the letter you have incorporated in the record.

Senator ANDERSON. Thank you.

(Whereupon the committee adjourned.)

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S. 1177

IN THE SENATE OF THE UNITED STATES

FEBRUARY 23, 1955

Mr. HAYDEN (for himself and Mr. GOLDWATER) introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

A BILL

For the relief of desert land entrymen whose entries are dependent upon percolating waters for reclamation.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the requirement of section 1 of the Desert Land Act
4 of March 3, 1877 (19 Stat. 377), that the right to the use
5 of water by a desert land entryman "shall depend upon bona
6 fide prior appropriation" shall be waived in the case of all
7 desert land entries which have heretofore been allowed and
8 are subsisting on the effective date of this Act, which are
9 dependent upon percolating waters for their reclamation,
10 and which are situated in States under the laws of which
11 the percolating waters upon which the entries are dependent
12 are not subject to the doctrine of prior appropriation.

84TH CONGRESS
1ST SESSION

S. 1177

A BILL

For the relief of desert land entrymen whose entries are dependent upon percolating waters for reclamation.

By Mr. HAYDEN and Mr. GOLDWATER

FEBRUARY 23, 1955

Read twice and referred to the Committee on Interior
and Insular Affairs

H. R. 4308

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 23, 1955

Mr. UDALL introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

A BILL

For the relief of desert land entrymen whose entries are dependent upon percolating waters for reclamation.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the requirement of section 1 of the Desert Land Act of
4 March 3, 1877 (19 Stat. 377), that the right to the use of
5 water by a desert land entryman "shall depend upon bona
6 fide prior appropriation" shall be waived in the case of all
7 desert land entries which have heretofore been allowed and
8 are subsisting on the effective date of this Act, which are
9 dependent upon percolating waters for their reclamation, and
10 which are situated in States under the laws of which the
11 percolating waters upon which the entries are dependent are
12 not subject to the doctrine of prior appropriation.

84TH CONGRESS
1ST SESSION

H. R. 4308

A BILL

For the relief of desert land entrymen whose entries are dependent upon percolating waters for reclamation.

By Mr. UDALL

FEBRUARY 23, 1955

Referred to the Committee on Interior and Insular
Affairs

H. R. 4303

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 23, 1955

Mr. RHODES of Arizona introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

A BILL

For the relief of desert land entrymen whose entries are dependent upon percolating waters for reclamation.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the requirement of section 1 of the Desert Land Act
4 of March 3, 1877 (19 Stat. 377), that the right to the use
5 of water by a desert land entryman "shall depend upon bona
6 fide prior appropriation" shall be waived in the case of all
7 desert land entries which have heretofore been allowed and
8 are subsisting on the effective date of this Act, which are
9 dependent upon percolating waters for their reclamation, and
10 which are situated in States under the laws of which the
11 percolating waters upon which the entries are dependent
12 are not subject to the doctrine of prior appropriation.

84TH CONGRESS
1ST SESSION

H. R. 4303

A BILL

For the relief of desert land entrymen whose entries are dependent upon percolating waters for reclamation.

By Mr. RHODES of Arizona

FEBRUARY 23, 1955

Referred to the Committee on Interior and Insular
Affairs

Senate

June 7, 1955

14. SOIL CONSERVATION. Sen. Ellender inserted a La. Legislature resolution opposing the reorganization of SCS (p. 6560).
15. ELECTRIFICATION. Sen. Sparkman inserted several newspaper articles criticizing the Hoover Commission recommendations regarding TVA (pp. 6564-6).
16. REORGANIZATION. Sen. Sparkman inserted a St. Louis Post-Dispatch editorial, "Achievement: Zero," criticizing the accomplishments of the Hoover Commission (p. 6566).
17. RECLAMATION; LANDS. The Interior and Insular Affairs Committee ordered reported without amendment S. 1177, for the relief of desert land entrymen whose entries are dependent upon percolating waters for reclamation, ~~and with amendments S. 1713, to amend the mining laws to provide for multiple use of the surface of the same tracts of the public lands~~ (p. D515).

BILLS INTRODUCED

18. DEFENSE PRODUCTION. S. 2163, by Sen. Frear, and S. 2165, by Sen. Capehart, to amend the Defense Production Act of 1950, as amended; to Banking and Currency Committee (p. 6562).
19. CCC. S. 2170, by Sen. Eastland, to permit sale of Commodity Credit Corporation stocks of basic and storable nonbasic agricultural commodities without restriction where similar commodities are exported in raw or processed form; to Agriculture and Forestry Committee (p. 6562).
20. TOBACCO RESEARCH. S. J. Res 75, by Sen. Scott (for himself and Sen. Clements), directing a study and report by the Administrator of the Agricultural Research Service of the Department of Agriculture proposing an expansion of the tobacco production, utilization, and marketing research program, with primary emphasis on basic research; to Agriculture and Forestry Committee (p. 6562). Remarks of author (p. 6562).
21. CONFERENCE REPORTS. S. Con. Res. 36, by Sen. Knowland (for himself and others), that there shall accompany every report of a committee of conference a statement, in writing and signed by at least a majority of the managers on the part of each House, explaining the effect of the action agreed on by the committee (p. 6562). It was announced that hearings will be held on S. 2163, beginning Mon., June 20, 1955, in room 301, S. Office Bldg., at 10 A. M.
22. RESEARCH. H. R. 6680, by Rep. Burdick, to prohibit experiments upon living dogs in the District of Columbia and providing a penalty for violation thereof; to District of Columbia Committee (p. 6665).
23. REGULATORY WORK. H. R. 6682, by Rep. Celler, to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders; to Judiciary Committee (pp. 6665-6).
24. WATERSHEDS. H. R. 6687, by Del. Fernos-Isern, to extend the benefits of the Watershed and Flood Prevention Act to Alaska, Hawaii, and Puerto Rico; to Agriculture Committee (p. 6666).
25. RESEARCH; LANDS. H. R. 6692, by Rep. O'Brien, N. Y., to authorize the transfer to the Department of Agriculture, for agricultural purposes, of certain real property in St. Croix, V. I.; to Interior and Insular Affairs Committee (p. 6666).

26. AIR POLLUTION. H. R. 6699, by Rep. Roosevelt, to provide research and technical assistance relating to air-pollution control; to Interstate and Foreign Commerce Committee (p. 6666).

ITEMS IN APPENDIX

27. RECLAMATION; ELECTRIFICATION. Rep. Preston, Ga., introduced a speech by Speaker Rayburn, on the occasion of the 20th anniversary of REA, Atlanta, Ga., in which the Speaker outlined the history of REA and praised the success of the REA program (pp. 3981-2).

Rep. Coon, Ore., quoted an editorial from the Walla Walla, Wash., Union-Bulletin approving the plan for development of hydroelectric power in the Northwest which is embodied in H. R. 5789, and pointing out the necessity of supplementing Government appropriations with private funds (pp. 4041-2).

Rep. Engle cited the value of reclamation as a national policy, inserting an article from the Sacramento Bee which covered the history of the Newlands project, Nev., with special reference to its financial self-sufficiency (p. A3984).

Extension of remarks by Rep. Aspinall, Colo., giving Bureau of Reclamation figures on estimates and actual costs of reclamation projects over the period from 1947 to 1955, which indicate relative low costs of these projects to the taxpayer (pp. A3985-7).

Rep. Hosmer criticized the proposed upper Colorado River project on the grounds that it would favor residents of a relatively small area at the expense of taxpayers of other States who would not directly benefit from it (p. A3987).

Rep. Dawson, Utah, urged support for the Colorado project and inserted an editorial from the Salt Lake Desert News-Telegram alleging that self-seeking Californians are opposing the best interests of the Northwest region (pp. A4004-5).

Rep. Vost, Idaho, inserted an article, "The Power Struggle at Hells Canyon," which maintains that the building of a high dam at Hells Canyon is necessary in view of rising demands for hydroelectric power in this area.

28. FOREIGN AID. Sen. Wiley inserted his address to the Ohio Department of the AMVETS, in which he stressed the altruistic basis of American foreign economic aid (pp. A4016-7).

29. ROADS. Extension of remarks by Rep. Scherer criticizing the financing plans of the Senate road bill and urging consideration of the House bill to finance highway construction (p. 3985).

Rep. Tumulty inserted a newspaper editorial criticizing the Senate road bill and in favor of the House version which would benefit New Jersey to a greater extent (pp. A3992-3).

Rep. Thomson, Wyo., inserted a resolution of the Western regional conference of Governors urging that the House bring the Senate road bill more into line with the original Clay recommendations (p. A4018).

30. PRICE SUPPORTS; COTTON. Rep. Gathings inserted a letter from L. Godley supporting high rigid price supports for cotton (pp. A3996-7).

31. FARM PROGRAM. Rep. Dague inserted an editorial from the Pennsylvania Grange News condemning the alleged insensitivity of urban areas to the problems of the farmer (pp. A4003-4).

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

40 ✓
OFFICE OF BUDGET AND FINANCE
(For Department Staff Only)

Issued June 13, 1955
For actions of June 10, 1955
84th-1st, No. 97

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HIGHLIGHTS. Senate committee reported bill to provide retirement credit for certain State service, and Commerce appropriation bill. Sen. Humphrey criticized CCC administration. House committee ordered reported bills to continue livestock loans and other emergency loans; and the farm credit bill.

SENATE

- ~~1. PERSONNEL. The Post Office and Civil Service Committee reported with amendments S. 1041, to provide for the inclusion in the computation of accredited service, under the Civil Service Retirement Act, of certain periods of service rendered States or instrumentalities of States (S. Rept. 507) (p. 6787).~~
- ~~2. COMMERCE DEPARTMENT APPROPRIATION BILL, 1956. The Appropriations Committee (during adjournment) reported with amendments this bill, H. R. 6367 (S. Rept. 512) (p. D535). It was announced that, if possible, the bill would be considered on Tues. (pp. 6784-5, 6800-1, 6802).~~
- ~~3. BANKING. The Banking and Currency Committee reported with amendments S. 1894, to provide for the U. S. participation in the International Finance Corporation (S. Rept. 505) (p. 6786).~~
- ~~4. RECLAMATION. The Interior and Insular Affairs Committee reported without amendment S. 1177, for the relief of desert land entrymen whose entries are dependent upon percolating waters for reclamation (S. Rept. 508) (p. 6787).
Sen. Humphrey urged the elimination of the proposed Echo Park dam from the upper Colorado River project and inserted a Minneapolis Star article, "Colorado River Plan Threatens Scenic Canyons" (pp. 6801-2).~~
- ~~5. CCC. Sen. Humphrey discussed a survey by congressional investigators of operations of the Department, stated there is "evidence being uncovered of flagrant and serious shortcomings in certain administrative activities of the Department of Agriculture," and inserted several newspaper articles on the CCC grain storage operations (pp. 6797-6800).~~
- ~~6. ADJOURNED until Tues., June 14 (p. 6803). Sen. Stennis announced that the calendar and the Commerce appropriation bill will be considered Tues. (pp. 6800-1).~~

HOUSE

7. SUBMARGINAL LANDS. The Agriculture Committee ordered reported with amendments H. R. 4280, to direct this Department to release conditions in two deeds conveying certain submarginal lands to Clemson Agricultural College of South Carolina (p. D536).
8. FARM LOANS. The Agriculture Committee ordered reported H. R. 4915, to extend for an additional 2 years the period for emergency assistance to farmers and stockmen; and with amendments H. R. 5822, to extend until June 30, 1957 (now June 30, 1955) the period for making loans in emergencies to farmers and stockmen for agricultural purposes (p. D536).

The Agriculture Committee ordered reported with amendments H. R. 5168, to provide for the retirement of Government capital in certain institutions operating under the supervision of FCA and to increase borrower participation in the management and control of the Federal Farm Credit System (p. D537).

BILLS INTRODUCED

9. WATER CONSERVATION. S. 2188, by Sen Knowland (for Sen. Dirksen), to amend the Watershed Protection and Flood Prevention Act to provide that the Federal Government shall pay a portion of the costs of certain works of improvement constructed for purposes of water conservation; to Public Works Committee (p. 6787).
10. COTTON. S. 2196, by Sen. Stennis (for himself and others), to amend section 344 of the Agricultural Adjustment Act of 1938, as amended, relating to cotton acreage allotments; to Agriculture and Forestry Committee (p. 6787). Remarks of author (pp. 6792-3).
11. ELECTRIFICATION. S. 2199, by Sen. Fulbright, authorizing the modification of the general plan for the comprehensive development of the White River Basin to provide for additional hydroelectric power development, for the control of floods; to Public Works Committee (p. 6787).
12. RECLAMATION. S. 2202, by Sen Hayden (for himself and Sen. Goldwater), to authorize the Secretary of the Interior to enter into an additional contract with the Yuma County Water Users' Association with respect to payment of construction charges on the valley division, Yuma reclamation project, Ariz.; to Interior and Insular Affairs Committee (p. 6787).

ITEMS IN APPENDIX

13. FOREIGN AID. Sen. Wiley inserted an article from the LaCrosse, Wis., Register, outlining the statement of a policy endorsed by religious leaders of Christian and Jewish faiths, to share the material abundance of America with foreign countries (pp. A4144-5).
14. RECLAMATION. Sen. Anderson stated his support of "a vigorous reclamation program" and inserted a letter-to-the-editor published in the Denver Post pointing out the importance of irrigation and reclamation in an expanding economy (p. A4146).
Extension of remarks of Rep. Hosmer criticizing the proposed LaBarge project and stating it would increase production of surplus crops (p. A4158).
15. MONOPOLIES. Sen. Humphrey inserted an article from the New York Journal-American, "Fair Trade Laws: A Consumers' Benefit," which defended our free-

DESERT LAND ENTRYMEN WHOSE ENTRIES ARE
DEPENDENT UPON PERCOLATING WATERS FOR
RECLAMATION

JUNE 10 (legislative day, JUNE 8), 1955.—Ordered to be printed

Mr. ANDERSON of New Mexico, from the Committee on Interior and Insular Affairs, submitted the following

R E P O R T

[To accompany S. 1177]

The Committee on Interior and Insular Affairs, to whom was referred the bill (S. 1177) relating to the relief of desert land entrymen whose entries are dependent upon percolating waters for reclamation, having considered the same, report favorably thereon and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to authorize the Secretary of the Interior to issue patents to 158 desert land entrymen in Arizona. This authorization, which is in effect a directive to the Department of the Interior, sets forth that the requirement of section 1 of the Desert Land Act of March 3, 1877 (19 Stat. 377), that the right to the use of water by a desert land entryman "shall depend upon bona fide prior appropriation" shall be waived under the circumstances set forth in the recommended legislation. These circumstances are that all these 158 desert land entries have heretofore been allowed and—

are subsisting on the effective date of this act and * * * are dependent upon percolating waters for their reclamation, and * * * are situated in States under the laws of which the percolating waters upon which the entries are dependent are not subject to the doctrine of appropriation.

Under the bill, if enacted, the Secretary of the Interior would waive the requirements in the case of 158 desert land entrymen in Arizona. Patents are now denied under an opinion of the Acting Solicitor of the Department of the Interior, dated February 23, 1955, set forth in this report. The Solicitor's opinion was based on a decision of the Supreme Court of Arizona handed down in 1953, which held that underground percolating waters are not subject to prior appropriation under Arizona law.

The Arizona Supreme Court opinion created a conflict with the Desert Land Act of 1877, which is the authority for issuing the patents. It requires that the right to the use of water by a desert-land entryman "shall depend upon a bona fide prior appropriation" of water to reclaim, by irrigation, arid agricultural lands.

Before the Solicitor's opinion, the 158 desert-land entrymen affected had in good faith performed all legal requirements for issuance of patents and the Bureau of Land Management, Department of the Interior, had approved the entries for patenting. Substantial expenditures have been made by the entrymen for development of the land on which entries had been made. This legislation for their relief will prevent the loss of the investments they have made in perfecting their entries.

While the terms of S. 1177 are generally applicable through all States where the Desert Land Act is operative, there are at the present time no known entries which will be affected except those in Arizona. A letter from the departmental Solicitor, printed elsewhere in this report, discusses legislation pertinent to the subject of the legislation in several of the Western States.

Public hearings were held on the bill on May 27, 1955. All witnesses heard favored enactment of the legislation and a letter from United States Senator Carl Hayden, of Arizona, sponsor of the bill with Senator Barry Goldwater, of Arizona, urged a favorable report by the committee.

LETTERS FROM EXECUTIVE DEPARTMENTS

The Bureau of the Budget offered no objection to the bill and the Department of the Interior recommended enactment of the legislation in the following communications:

APRIL 12, 1955.

HON. JAMES E. MURRAY,

*Chairman, Committee on Interior and Insular Affairs,
United States Senate, Washington 25, D. C.*

MY DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Bureau of the Budget with respect to S. 1177, for the relief of desert land entrymen whose entries are dependent upon percolating waters for reclamation.

The Desert Land Act of March 3, 1877 (43 U. S. C. 321), requires that the right of desert land entrymen to the use of water for reclaiming their entries "shall depend upon bona fide prior appropriation." S. 1177 would waive this requirement in the case of desert land entries which have heretofore been allowed and are subsisting on the date of enactment of the bill, which are dependent upon percolating waters for their reclamation, and which are situated in States where percolating waters upon which the entries are dependent are not subject to the doctrine of prior appropriation.

Although the bill is written on a general basis, it is our understanding that the bill is directed at a problem which arose in Arizona as a result of a recent decision by the supreme court of that State. That decision has the effect of preventing certain desert land entries from going to patent. The circumstances are described in greater detail in the report which the Department of the Interior is making to your committee. Since the entries were applied for in good faith and the entrymen have apparently made expenditures and performed work with a view to securing patent to the entries, it would appear fair to provide relief to these entrymen.

This Bureau would have no objection to the enactment of S. 1177.

Sincerely yours,

DONALD R. BELCHER,
Assistant Director.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington 25, D. C., April 15, 1955.

HON. JAMES E. MURRAY,
*Chairman, Committee on Interior and Insular Affairs,
United States Senate, Washington 25, D. C.*

MY DEAR SENATOR MURRAY: This is in reply to your request for the views of this Department on S. 1177, a bill for the relief of desert land entrymen whose entries are dependent upon percolating waters for reclamation.

I recommend that S. 1177 be enacted.

Section 1 of the Desert Land Act of March 3, 1877 (43 U. S. C., 1952 ed., sec. 321), requires that the right of desert land entrymen to the use of water for reclaiming their entries "shall depend upon bona fide prior appropriation." S. 1177, if enacted, would waive this requirement in the case of all desert land entries which have heretofore been allowed and are subsisting on the effective date of the statute, which are dependent upon percolating waters for their reclamation, and which are situated in States under the laws of which the percolating waters upon which the entries are dependent are not subject to the doctrine of prior appropriation.

During the past year, a question has arisen in the Department with respect to the meaning of this provision of the Desert Land Act and its effect upon desert land entries in the State of Arizona which are dependent for irrigation upon percolating waters, i. e., underground water which does not flow in a well-defined channel with banks. The question arose primarily as a result of a recent decision by the Supreme Court of Arizona with respect to the law of the State governing percolating waters. In that decision, *Bristor v. Cheatham* (75 Ariz. 227, 255 P. 2d 173), decided on March 14, 1953, the Arizona court held that percolating waters in that State are not subject to the doctrine of prior appropriation but are subject only to the doctrine of reasonable use.

The Bristor decision raised the question whether desert land entries for lands in Arizona could be allowed or patented where such entries are dependent on percolating waters for reclamation. The question was referred to the Acting Solicitor of the Department who has rendered an opinion holding that such entries cannot be allowed or patented under the Desert Land Act since the right of the entrymen or the applicants for entry to use percolating waters does not depend upon prior appropriation. A copy of the Acting Solicitor's opinion M-36263, dated February 23, 1955, is attached. It discusses the problem in detail.

According to the Bureau of Land Management of this Department, there are approximately 158 desert land entries in Arizona which have been allowed and are currently subsisting but which are dependent on percolating waters for reclamation. The entries were applied for in good faith and the entrymen have apparently made expenditures and performed work with a view to securing patents to the entries. In many cases the expenditures have been substantial. However, under the law as set forth in the Acting Solicitor's opinion, the entries cannot go to patent so long as the percolating waters on which they are dependent are not subject to appropriation. This means that in time, as the statutory life of the entries expires, the entrymen will lose the fruits of their labor and expenditures. Immediately, because of this prospect, the entrymen are uncertain as to whether to proceed with their work on the entries.

In these circumstances, it seems only fair and equitable that the entrymen should be allowed to perfect their entries regardless of the requirement in the Desert Land Act that they have a water right dependent upon prior appropriation. S. 1177 would accomplish this purpose. It would simply waive in the case of these entries the requirement that the right to use of water depends on prior appropriation. In all other respects, such as reclamation and expenditures, the entrymen would remain subject to the requirements of the Desert Land Act.

The problem under consideration has so far arisen only in Arizona. S. 1177, however, has been drawn on a general basis and would thus take care of any similar problem in other States to which the Desert Land Act applies.

It should be noted that the bill applies only to existing entries which have been allowed. The bill will not permit future desert land entries to be made in Arizona which are dependent on percolating waters. Whether broader legislation should be enacted is a matter on which the Department takes no position at this time. The Department's immediate concern is in affording relief to existing entrymen who have an immediate problem on their hands, and the Department urges that such relief be granted without delay.

The Bureau of the Budget has advised that there is no objection to the submission of this report to the committee.

Sincerely yours,

ORME LEWIS,
Assistant Secretary of the Interior.

ACTING SOLICITOR'S OPINION, DEPARTMENT OF THE INTERIOR

The Acting Solicitor's opinion is as follows:

M-36263

FEBRUARY 23, 1955.

VALIDITY OF DESERT LAND APPLICATIONS AND ENTRIES IN ARIZONA DEPENDENT ON PERCOLATING WATER FOR RECLAMATION

Desert land entry, water right

When Congress provided in the Desert Land Act that the right to use of water by the entryman "shall depend upon bona fide prior appropriation," Congress used the words "prior appropriation" as words of art having reference to the well-established doctrine of prior appropriation then obtaining in the Western States and Territories.

Desert land entry, water right

Whether water is subject to prior appropriation as required in the Desert Land Act is a matter governed by State law.

Water and water rights, State laws

Under the second opinion of the Arizona Supreme Court in the case of *Bristor v. Cheatham*, percolating waters are not subject to the doctrine of prior appropriation but only to the doctrine of reasonable use.

Desert land entry, water right

Applications for desert land entries in Arizona cannot be allowed, and allowed desert land entries in that State cannot be patented, where the entries are dependent upon percolating waters for reclamation.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington 25, D. C., February 23, 1955.

Memorandum.

To: Director, Bureau of Land Management.

From: Acting Solicitor.

Subject: Validity of desert land applications and entries in Arizona dependent on percolating water for reclamation.

You have requested my opinion as to whether, in view of the decision by the Supreme Court of Arizona in the case of *Bristor v. Cheatham* (75 Ariz. 227, 255 P. 2d 173 (1953)), applications for desert land entries in that State can be allowed or allowed desert land entries in that State can be patented where reclamation of the entry depends upon percolating water.

As the term "percolating water" is used in your request and this opinion, it means underground water which does not comprise or is not part of an underground stream which has a well-defined channel and banks and a current.

Section 1 of the Desert Land Act of March 3, 1877 (43 U. S. C., 1952 ed., sec. 321), provides in part as follows:

"* * * it shall be lawful for any citizen of the United States * * * to file a declaration * * * that he intends to reclaim a tract of desert land * * * by conducting water upon the same * * * *Provided, however,* That the right to the use of water by the person so conducting the same * * * shall depend upon bona fide prior appropriation: * * * and all surplus water over and above such actual appropriation and use, together with the water of all, lakes, rivers and other sources of water supply upon the public lands and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, mining and manufacturing purposes subject to existing rights" (19 Stat. 377).

The answer to your question depends upon the interpretation to be given to the specific portion of the quotation from the act which requires that "the right to the use of water by the person so conducting the same * * * shall depend upon bona fide prior appropriation."

In *California Oregon Power Co. v. Beaver Portland Cement Co.* (295 U. S. 142 (1935)), the United States Supreme Court held that a homestead patent issued in 1885 for land bordering on a stream did not carry with it the common law riparian right to have the stream flow by the land in its accustomed channel without substantial diminution. This holding was based on the Court's interpretation of the provision of section 1 of the Desert Land Act following the clause just quoted and beginning with "and all surplus water," etc. Although the Court was not directly concerned with the clause under consideration here, it discussed at length the background of the Desert Land Act and made a number of statements which are very illuminating with respect to the point at issue. The more significant statements follow:

"For many years prior to the passage of the act of July 26, 1866 * * * the right to the use of waters for mining and other beneficial purposes in California and the arid region generally was fixed and regulated by local rules and customs. The first appropriator of water for a beneficial use was uniformly recognized as having the better right to the extent of his actual use. The common law with respect to riparian rights was not considered applicable, or, if so, only to a limited degree. * * * The rule generally recognized throughout the States and Territories of the arid region was that the acquisition of water by prior appropriation for a beneficial use was entitled to protection * * *" (p. 154). [Emphasis added.]

"That body [the Congress] thoroughly understood that an enforcement of the common-law rule, by greatly retarding if not forbidding the diversion of waters from their accustomed channels, would disastrously affect the policy of dividing the public domain into small holdings and effecting their distribution among innumerable settlers. In respect of the area embraced by the desert-land States, with the exception of a comparatively narrow strip along the Pacific seaboard, it had become evident to Congress, as it had to the inhabitants, that the future growth and well-being of the entire region depended upon a complete adherence to the rule of appropriation for a beneficial use as the exclusive criterion of the right to the use of water" (p. 157). [Emphasis added.]

"In the light of the foregoing considerations, the Desert Land Act was passed, and in their light it must now be construed" (p. 158).

These extracts from the *Power Co.* case leave little doubt that the rule of prior appropriation was a well-established doctrine of water law in the Western States and Territories at the time the Desert Land Act was passed and that, when Congress provided in the act that the right to use of water by a desert land entryman "shall depend upon bona fide prior appropriation," Congress used the words "prior appropriation" as words of art having a clear and precise meaning.

The question then presents itself whether the right to appropriate water for the reclaiming of a desert land entry is a matter governed by State law or Federal law. The *Power Co.* case provides the answer. The Court stated in that case:

"As the owner of the public domain, the Government possessed the power to dispose of land and water thereon together, or to dispose of them separately. * * * The fair construction of the provision now under review¹ is that Congress intended to establish the rule that for the future the land should be patented separately; and that all nonnavigable waters thereon should be reserved for the use of the public under the laws of the States and Territories named" (p. 162). [Emphasis added.]

"Nothing we have said is meant to suggest that the [Desert Land] act, as we construe it, has the effect of curtailing the power of the States affected to legislate in respect of waters and water rights as they deem wise in the public interest. What we hold is that following the act of 1877, if not before, all nonnavigable waters then a part of the public domain became *publici juris*, subject to the plenary control of the designated States, including those since created out of the Territories named, with the right in each to determine for itself, to what extent the rule of appropriation or the common-law rule in respect of riparian rights should obtain. * * * The Desert Land Act does not bind or purport to bind the States to any policy. It simply recognizes and gives sanction, insofar as the United States and its future grantees are concerned, to the State and local doctrine of appropriation, and seeks to remove what otherwise might be an impediment to its full and successful operation" (pp. 163-164). [Emphasis added.]

It is clear, then, that whether a desert land entry in Arizona can be based upon percolating water depends upon whether, under the law of Arizona, percolating water is subject to the doctrine of prior appropriation.

This question was settled only relatively recently in the case of *Bristor v. Cheatham*, *supra*. To appreciate the full significance of that case, a brief con-

¹ The clause in sec. 1 of the act commencing with "and all surplus water," etc.

sideration of the history of the Arizona law on percolating water is necessary. The first pronouncement by the Arizona Supreme Court on the subject of percolating water apparently was in the case of *Howard v. Perrin* (76 Pac. 460 (1904), affirmed 200 U. S. 71 (1906)). In that case, the court stated that percolating water, as distinguished from water in an underground stream, belonged to the owner of the soil and was not subject to appropriation by another.

In *Maricopa County Municipal Water Conservation District No. 1 et al. v. Southwest Cotton Co. et al.* (4 P. 2d 369 (1931)), the Arizona court decided to treat the subject of underground water as a matter of first impression. In a lengthy opinion, the court concluded that "our holding in *Howard v. Perrin*, supra, that percolating subterranean waters were not subject to appropriation, was and still is the law of Arizona" (4 P. 2d, at p. 376).

Then came the case of *Bristor v. Cheatham*. This was an action by the plaintiffs to restrain the defendants from diverting water which the plaintiffs were pumping from domestic wells on their property. The plaintiffs alleged as a first count that the defendants had sunk a number of large wells on defendants' property to a common source of underground water underlying the lands of both and were pumping and conveying the water 3 miles distant to reclaim other land owned by the defendants, and that this withdrawal of water was drying plaintiffs' wells. In a second count, the plaintiffs alleged that the waters from which their wells were supplied were taken from an underground stream. The action was dismissed on both counts by the lower court.

When the case came before the Supreme Court of Arizona, the court first held on January 12, 1952, that its ruling in *Howard v. Perrin* was dictum and contrary to the Desert Land Act; it overruled that case and held that percolating waters are subject to the doctrine of prior appropriation (*Bristor v. Cheatham*, 240 P. 2d 185). A rehearing was granted, following which the court reversed itself on March 14, 1953 (255 P. 2d 173). The court said:

"The State of Arizona through its legislature has adopted its policy and local doctrine to the effect that ground waters are not subject to appropriation. It seems the only answer, therefore, is that a prior right to the use of ground waters cannot now be acquired and never could have been acquired under the law of prior appropriation. We hold, therefore, that such waters are not subject to any law of appropriation" (255 P. 2d, at p. 177). [Emphasis added.]

The court went on to hold that the owner of land overlying percolating water has a right to use the water subject to the doctrine of reasonable use, as distinguished from the doctrine of correlative rights. Under the latter doctrine, a landowner would be limited to his proportionate share of the percolating water underlying his land and the lands of his neighbors. Under the doctrine of reasonable use, a landowner may use, without any liability to an adjoining user, as much of the percolating water as he can reasonably put to a beneficial use on his land even though it exceeds his proportionate share of the water. See 55 A. L. R. 1385 and 109 A. L. R. 395.

It is plain from the two opinions in the Bristor case that the doctrine of prior appropriation is diametrically opposed to the doctrine of reasonable use. Under the first doctrine, a prior appropriator acquires a legal right to a definite quantity of water which cannot be diverted by any subsequent appropriator even though the latter could put the water to a beneficial use. Under the second doctrine, a prior user of water acquires no right to the quantity of water used. Any subsequent user of water, by drilling a larger well or installing a more powerful pump, can, without liability, drain him dry so long as the water is put to a beneficial use by the subsequent user.

I find it impossible, therefore, to interpret the clause in the Desert Land Act which requires that "the right to the use of water * * * shall depend upon bona fide prior appropriation" as encompassing the doctrine of reasonable use as set forth in the second Bristor opinion.

The Department's regulations do not sanction the allowance or patenting of a desert land entry which depends upon percolating water which is subject only to the doctrine of reasonable use. The pertinent regulation currently in effect (43 CFR 232.13; 19 F. R. 9084), which has been unchanged since its adoption on May 18, 1916 (Circ. 474, 45 L. D. 345, 351), provides in part as follows:

"SEC. 232.13 *Evidence of water rights required with application.* No desert-land application will be allowed unless accompanied by evidence satisfactorily showing either that the intending entryman has already acquired by appropriation, purchase, or contract a right to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought, or that he has initiated and prosecuted, as far as then possible, appropriate steps looking to the acquisition

of such a right. * * * All applications not accompanied by the evidence above indicated will be rejected."

The requirement in the regulation is clear that an applicant must acquire, or take steps to acquire, a legal right to the permanent use of sufficient water to reclaim his entry. The same requirement is stated in the regulation dealing with the submission of final proof (43 CFR 232.32; 19 F. R. 9086).

As we have seen, a landowner has no legal assurance of a permanent supply of water under the doctrine of reasonable use. His "right" to use percolating water, unlike the right of a prior appropriator, is always subject to diminution or abrogation by a subsequent user of the water.

It is my opinion, therefore, upon the basis of the Desert Land Act and the second opinion of the Supreme Court of Arizona in *Bristor v. Cheatham*, that an application for a desert land entry on land in Arizona cannot be allowed, and that a patent cannot be issued for such an entry which has been allowed, where the entry is dependent upon percolating water for reclamation.

J. REUEL ARMSTRONG,
Acting Solicitor.

LETTER REGARDING STATE LAWS

A subsequent letter from the Solicitor to Senator Hayden, explaining the laws of some of the Western States relating to the subject of the water-right showings required, is as follows:

MAY 24, 1955.

HON. CARL HAYDEN,
United States Senate,
Washington, D. C.

MY DEAR SENATOR HAYDEN: Further reference is made to your letter of April 5, requesting our comments on Mr. Coker's letter to you of March 30, concerning the water rights showing required for an entry of public lands in Arizona under the desert land law (43 U. S. C., sec. 321 et seq.).

Solicitor's opinion M-36263, a copy of which is enclosed, stated that where such entry would be dependent upon percolating water for reclamation, an application for entry or patent under the desert land law cannot be allowed. Under the desert land law, the right to use water on public land depends upon bona fide prior appropriation under the State law. The applicant must show he has acquired or will acquire by appropriation, purchase, or contract a right to the permanent use of sufficient water to irrigate and reclaim the public lands (43 CFR 232.13 and 232.32). The recent decision of the Supreme Court of Arizona in *Bristor v. Cheatham* (255 P. (2d) 173 (1953)) held that rights to percolating waters in Arizona cannot be acquired under the law of prior appropriation. That decision declares the law of the State with respect to this question. The applicant clearly cannot meet the requirements of the desert land law, therefore, if his entry depends on percolating water in Arizona.

Mr. Coker states in his letter that this Department has in the past interpreted the desert land law as permitting the showing of a water right dependent upon percolating waters. He finds evidence of such an interpretation from a Government annual proof form which gives credit toward meeting the requirements of the desert land law for expenditures made to construct windmills, pumps, and irrigation wells. The annual proof form does indicate acceptable types of the improvement expenditures, but does not show what an applicant must prove with respect to his legal right to a definite quantity of water. No decision of this Department has been found holding that a desert land entry dependent on percolating waters may be allowed in a State which does not recognize appropriation of such waters. Our opinion M-36263, it should be noted, did not state that ground water obtained from wells in Arizona could never be used as the basis for an acceptable water right showing. Ground water is defined as including water in the ground, that is, under the surface (Selected Problems in the Law of Water Rights in the West, U. S. Department of Agriculture, Miscellaneous Publication No. 418, 1942, at p. 24). In Arizona, as in almost every other Western State, water in defined channels of underground streams is subject to prior appropriation and therefore can be used to establish a showing of the water right needed under the desert land laws.

There is little doubt that at the time of the enactment of the Desert Land Act on March 3, 1877, the doctrine of appropriation was well recognized. See *California Oregon Power Co. v. Beaver Portland Co.* (295 U. S. 142, 154 (1935)).

The recognition of "prior appropriation" in the Desert Land Act, moreover, does not limit the doctrine to surface water.

Mr. Coker's statement that the "laws in the Western States in 1916 or thereabouts, will disclose that none of them had any provisions in their code for the appropriation of ground or percolating water" is not entirely accurate. Section 4169, Revised Statutes 1901, Arizona, authorized prior appropriation of "any of the unappropriated waters" in the Territory. This section was carried over into Revised Statutes 1913, section 5337. In 1919, it was definitely provided that ground water in definite underground channel was subject to appropriation (Arizona Code Annotated 1939, 75-101). The 1919 act confirmed the law of Arizona recognized prior to and after 1916, as indicated by the case cited by Mr. Coker of *Howard v. Perrin* (76 Pac. 460, 462 (1904)) upheld by the United States Supreme Court (200 U. S. 71 (1905)), and reaffirmed by *Maricopa County Municipal Water Conservation District No. 1 v. Southwest Cotton Co.* (39 Arizona 65, 4 P. (2d) 369, 376 (1931)). The decisions of the State courts, of course, are declarative of the law of the State (*Bristor v. Cheatham*, 255 P. (2d) 173, 175 (1953)).

In 1899, Idaho enacted a law providing that the right to the use of subterranean waters may be acquired by appropriation (Idaho Code, 1948, secs. 42-103). In 1913, the Nevada statute provided that "all sources of water supply within the boundaries of the State, whether above or beneath the surface of the grounds" may be appropriated as provided in the act (Nev. Comp. Laws, 1929, secs. 7890 and 7891). In 1915 a statute provided that "all underground waters, save and except percolating water" were subject to appropriation (Nev. Sess. Laws, 1915, sec. 1, ch. 210, p. 323). A Utah statute in 1903 (Utah Comp. Laws, 1907, secs. 1288-18) made water flowing above or under the ground in known or defined channels public property. The appropriation doctrine was held applicable in Utah to such water (*Whitmore v. Utah Fuel Co.* 73 Pac. 764, 767 (1903)).

Mr. Coker also suggests amending the Desert Land Act to "settle the question as to the use of irrigation well or percolating waters for the reclamation of desert lands, whether the States have passed any ground-water legislation or not." Whether Federal legislation, even as to percolating water, is necessary or desirable is an important consideration. The State of Arizona can make such provision as it thinks wise for the acquisition of rights to percolating water on public or other lands in the State. There are decided advantages to the present provisions of the desert land law which assure the acquisition by the applicant of the supply of water necessary for desert land entry, and leave up to the State the method of such acquisition. This letter, of course, attempts only to clarify the problem raised, and is not intended to indicate what views this Department might express on a specific bill if the Department were called upon to report on such legislation.

Sincerely yours,

J. REUEL ARMSTRONG, *Solicitor.*

CHANGES IN EXISTING LAW

In compliance with the Cordon rule (subsec. (4) of rule XXIX of the Standing Rules of the Senate) changes in existing law made by the bill S. 1177, as reported, are limited to a waiver of the requirement of section 1 of the Desert Land Act of March 3, 1877 (19 Stat. 377), as shown by the full text of S. 1177 as reported.

TEXT OF S. 1177, SHOWING WAIVER OF PROVISIONS OF THE DESERT LAND ACT OF MARCH 3, 1877 (19 STAT. 377)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the requirement of section 1 of the Desert Land Act of March 3, 1877 (19 Stat. 377), that the right to the use of water by a desert land entryman "shall depend upon bona fide prior appropriation" shall be waived in the case of all desert land entries which have heretofore been allowed and are subsisting on the effective date of this Act, which are dependent upon percolating waters for their reclamation, and which are situated in States under the laws of which the percolating waters upon which the entries are dependent are not subject to the doctrine of prior appropriation.

84TH CONGRESS
1ST SESSION

S. 1177

[Report No. 508]

Calendar No. 512

IN THE SENATE OF THE UNITED STATES

FEBRUARY 23, 1955

Mr. HAYDEN (for himself and Mr. GOLDWATER) introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

JUNE 10 (legislative day, JUNE 8), 1955

Reported by Mr. ANDERSON, without amendment

A BILL

For the relief of desert land entrymen whose entries are dependent upon percolating waters for reclamation.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the requirement of section 1 of the Desert Land Act
4 of March 3, 1877 (19 Stat. 377), that the right to the use
5 of water by a desert land entryman "shall depend upon bona
6 fide prior appropriation" shall be waived in the case of all
7 desert land entries which have heretofore been allowed and
8 are subsisting on the effective date of this Act, which are
9 dependent upon percolating waters for their reclamation.

84TH CONGRESS
1ST SESSION**S. 1177**

[Report No. 508]

A BILL

For the relief of desert land entrymen whose entries are dependent upon percolating waters for reclamation.

By Mr. HAYDEN and Mr. GOLDWATER

FEBRUARY 23, 1955

Read twice and referred to the Committee on Interior
and Insular Affairs

JUNE 10 (legislative day, JUNE 8), 1955

Reported without amendment

1 and which are situated in States under the laws of which
2 the percolating waters upon which the entries are dependent
3 are not subject to the doctrine of prior appropriation.

17. POSTAL RATES. The Post Office and Civil Service Committee reported with amendments S. 1292, to readjust postal classification on educational and cultural materials (S. Rept. 517) (p. D547).
18. LANDS. Passed without amendment S. 1878, to amend the act authorizing the conveyance of certain ARS lands to Miles City, Mont., in order to extend for 5 years the authority under such act (p. 6896).
19. RECLAMATION. Passed without amendment S. 1177, for the relief of desert land entrymen whose entries are dependent upon percolating waters for reclamation (p. 6897).
Sen. Barrett criticized reduction in appropriations for reclamation projects and stated that reductions for the Missouri Basin project are "unjustified and unwarranted" (p. 6937-8).
20. RESEARCH. Sen. Humphrey spoke in favor of Hoover Commission recommendations that greater Federal support be given to both basic and medical research and inserted a Washington Post article on this subject (pp. 6934-6).

ITEMS IN APPENDIX

21. MONOPOLIES. Sen. Humphrey inserted an article from the Minnesota Food Guide in which the National Association of Retail Grocers charges that the recent recommendations of the Attorney General's National Committee are an attempt to undermine the authority of the Robinson-Patman Act (pp. A4203-4).
Rep. Celler described the progress being made by the Antitrust Subcommittee of the House Judiciary Committee in unearthing evidence of unfair trade practices, and its efforts to initiate legislation strengthening antitrust laws, and mentioned that the recommendations of the Attorney General have very little support among witnesses before this subcommittee (pp. A4245-7).
22. ELECTRIFICATION; RECLAMATION. Sen. Sparkman inserted an editorial, "Private vs. Public Power," commending TVA for being instrumental in bringing down private power rates and charging that "the latest move to hamper TVA ... is the 'power squeeze'" (p. A4205).
Another editorial inserted by Sen. Sparkman maintains that TVA has paid its own way, at the same time producing cheap power, and criticizes the Budget Bureau for imposing restrictions on its operations (p. A4210).
Rep. Radwan inserted a resolution from the Young Men's Republican Club of Erie Co., Buffalo, N. Y., endorsing his bill for construction for power purposes on the Niagara River (p. A4216).
Rep. Coon quoted an editorial from the Naches, Wash., Sun, approving the principle of cooperation between public and private power interests in reclamation projects (p. A4225).
Rep. Hiestand charged that Drew Pearson distorted the facts regarding Vice President Nixon's attendance at the REA 20th anniversary observance, and quoted a letter from REA Administrator Nelson correcting the alleged misinformation (pp. A4224-5).
Rep. Green quoted an address by former Pres. Truman in which he bitterly criticized the Administration's policies in regard to the development of public power projects (pp. A4241-2).
23. DAIRY. Rep. Quigley inserted an article from the Pennsylvania Farmer advocating better promotion for dairy products, as opposed to lower prices, for creating larger markets (pp. A4216-7).

24. IMMIGRATION. Rep. Coudert inserted a speech delivered at the Carnegie Hall Rally for a Fair Immigration Law, urging legislation easing some of the restrictions of present immigration laws (pp. A4217-8).
25. FOREIGN AID. Sen. Langer inserted from the Washington Star Constantine Brown's article criticizing foreign aid as "fleecing the taxpayer," charging an uncoordinated program, wastefulness, and duplication of services by many agencies (pp. A4229-30).

BILLS INTRODUCED

26. MONOPOLIES. S. 2205, by Sen. Sparkman, to amend section 11 of the Clayton Act to provide for the more expeditious enforcement of cease and desist orders issued thereunder; to Judiciary Committee (p. 6865).
27. RECLAMATION. S. 2206, by Sen. Hruska, to provide for the construction and operation by the Secretary of the Interior of the Ainsworth unit of the Missouri River Basin project; to Interior and Insular Affairs Committee (p. 6865).
- S. 2218, by Sen. Bible (for himself and Sen. Malone), to provide for the conveyance, upon completion of the payment of construction charges, of the Newlands project, including lands and works, to the Truckee-Carson Irrigation District, Fallon, Nev.; to Interior and Insular Affairs Committee (p. 6865). Remarks of author (pp. 6866-7).
- S. 2217, by Sen. Bible, to provide for transfer of title to irrigation distribution systems constructed under the Federal reclamation laws upon completion of repayment of the costs thereof; to Interior and Insular Affairs Committee (p. 6865). Remarks of author (pp. 6866-7).
- S. 2234, by Sen. Morse (for himself and Sen. Neuberger), to authorize the Secretary of the Interior to construct, operate, and maintain the Juniper division of the Wapinitia Federal reclamation project, Oregon; to Interior and Insular Affairs Committee (p. 6866). Remarks of author (p. 6878).
28. CIVIL DEFENSE. S. 2215, by Sen. Kefauver (for himself and others), to establish a civil defense commission to study dispersal; to Armed Services Committee (p. 6865). Remarks of author (p. 6866).
29. APPROPRIATIONS. S. 2216, by Sen. Ellender, to amend the act of March 4, 1915 (38 Stat. 1086, 1101; 16 U. S. C. 497); to Agriculture and Forestry Committee (p. 6865).
30. REA. S. 2230, by Sen. Williams, to make the Housing and Home Finance Agency, the Rural Electrification Administration, and the Small Business Administration subject to the Government Corporation Control Act; to Government Operations Committee (p. 6866). Remarks of author (p. 6878).
31. LANDS. H. R. 6807, by Del. Farrington, to authorize the amendment of certain patents of Government lands containing restrictions as to use of such lands in the Territory of Hawaii; to Interior and Insular Affairs Committee (p. 6991).
- H. R. 6808, by Del. Farrington, to amend section 73 (1) of the Hawaiian Organic Act; to Interior and Insular Affairs Committee (p. 6991).
- H. R. 6815, by Rep. Poage, to provide for the orderly disposition of property acquired under title III of the Bankhead-Jones Farm Tenant Act; to Agriculture Committee (p. 6991).

S. 1177

IN THE HOUSE OF REPRESENTATIVES

JUNE 15, 1955

Referred to the Committee on Interior and Insular Affairs

AN ACT

For the relief of desert land entrymen whose entries are dependent upon percolating waters for reclamation.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the requirement of section 1 of the Desert Land Act
4 of March 3, 1877 (19 Stat. 377), that the right to the use
5 of water by a desert land entryman "shall depend upon bona
6 fide prior appropriation" shall be waived in the case of all
7 desert land entries which have heretofore been allowed and
8 are subsisting on the effective date of this Act, which are
9 dependent upon percolating waters for their reclamation,
10 and which are situated in States under the laws of which
11 the percolating waters upon which the entries are dependent
12 are not subject to the doctrine of prior appropriation.

Passed the Senate June 14, 1955.

Attest:

FELTON M. JOHNSTON,

Secretary.

AN ACT

For the relief of desert land entrymen whose entries are dependent upon percolating waters for reclamation.

JUNE 15, 1955

Referred to the Committee on Interior and Insular
Affairs

entitlement to all benefits pertaining to any officer retired in such grade, was considered, ordered to a third reading, read the third time, and passed.

INCREASED EFFICIENCY OF COAST AND GEODETIC SURVEY

The bill (H. R. 5398) to increase the efficiency of the Coast and Geodetic Survey, and for other purposes was considered, ordered to a third reading, read the third time, and passed.

LIGHTS REQUIRED TO BE CARRIED BY MOTORBOATS

The Senate proceeded to consider the bill (S. 1791) to amend section 3 of the act of April 25, 1940 (54 Stat. 164), relating to the lights required to be carried by motorboats which had been reported from the Committee on Interstate and Foreign Commerce, with amendments, on page 1, line 7, after the word "the", to strike out "white light aft" and insert "combined lantern", and in line 18, after the word "the", to strike out "combined lantern" and insert "white light aft", so as to make the bill read:

Be it enacted, etc., That subsection (c) of section 3 of the act of April 25, 1940 (54 Stat. 164; U. S. C., 1952 edition, title 46, sec. 526b) is amended to read as follows:

"(c) Motorboats of classes A and 1 when propelled by sail alone shall carry the combined lantern, but not the white light aft, prescribed by this section. Motorboats of classes 2 and 3, when so propelled, shall carry the colored side lights, suitably screened, but not the white lights, prescribed by this section. Motorboats of all classes, when so propelled, shall carry, ready at hand, a lantern or flashlight showing a white light which shall be exhibited in sufficient time to avert collision."

SEC. 2. Section 3 of the act is further amended by adding after subsection (d) thereof the following new subsections:

"(e) When propelled by sail and machinery any motorboat shall carry the lights required by this section for a motorboat propelled by machinery only.

"(f) Any motorboat may carry and exhibit the lights required by the Regulations for Preventing Collisions at Sea, 1948, act of October 11, 1951 (65 Stat. 406-420), as amended, in lieu of the lights required by this section."

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

PARTICIPATION OF THE UNITED STATES IN THE INTERNATIONAL FINANCE CORPORATION—BILL PASSED OVER

The bill (S. 1894) to provide for the participation of the United States in the International Finance Corporation was announced as next in order.

Mr. PURTELL. Mr. President, I consider this bill is not a proper measure to be considered on a call of the calendar. It involves a subscription by the United States Government of more than \$35 million in public funds, and I suggest that the bill go over.

The PRESIDING OFFICER. The bill will be passed over.

SURVEY OF PASSAMAQUODDY TIDAL POWER PROJECT

The Senate proceeded to consider the joint resolution (S. J. Res. 12) to authorize and direct the International Joint Commission of United States-Canadian boundary waters to make a survey of the proposed Passamaquoddy tidal power project, and for other purposes, which had been reported from the Committee on Foreign Relations, with amendments, on page 1, line 7, after the word "treaty", to strike out "is authorized and directed to make a survey" and insert "be requested by the Secretary of State to arrange for a survey to be made", and on page 2, line 24, after the numeral "4", to strike out "The International Joint Commission shall report the results of such survey to the Congress of the United States and to the Government of the Dominion of Canada" and insert "The Secretary of State shall report the results of such survey to the Congress of the United States", so as to make the joint resolution read:

Resolved, etc., That the International Joint Commission created by the treaty between the United States and Great Britain relating to boundary waters between the United States and Canada, signed at Washington on January 11, 1909, under the provisions of such treaty, be requested by the Secretary of State to arrange for a survey to be made to determine the cost of construction of the proposed Passamaquoddy tidal power project at Passamaquoddy Bay in the State of Maine, United States of America, and the Province of New Brunswick, Dominion of Canada, and to determine whether or not such cost would allow hydroelectric power to be produced at a price that is economically feasible, and also to determine what contribution such project would make to the national economy and the national defense.

SEC. 2. The survey provided for in the first section shall be consistent with the report (dated March 15, 1950) made by the International Passamaquoddy Engineering Board to the International Joint Commission, and with the supplemental report (dated May 1952) on details of estimate of cost of comprehensive investigation of Passamaquoddy tidal power project by Corps of Engineers, United States Army.

SEC. 3. The Secretary of the Army, the Federal Power Commission, and other officers and agencies of the Government of the United States are authorized to assist the International Joint Commission in the making of such survey, and shall be compensated for any work performed pursuant to this section out of such funds as may hereafter be appropriated for use by the International Joint Commission in carrying out this joint resolution.

SEC. 4. The Secretary of State shall report the results of such survey to the Congress of the United States.

SEC. 5. There is authorized to be appropriated not to exceed \$3 million to carry out this joint resolution, and any sum appropriated pursuant to this section shall be included in any determination of the proportionate share of the cost of construction of the Passamaquoddy tidal power project to be borne by the United States.

The amendments were agreed to.

The joint resolution was ordered to a third reading, read the third time, and passed.

The title was amended so as to read: "Joint resolution to request the Secretary of State to arrange for the International

Joint Commission, United States and Canada, to conduct a survey of the proposed Passamaquoddy tidal power project, and for other purposes."

INCLUSION OF FEDERAL-STATE SERVICE IN RETIREMENT COMPUTATION—BILL PASSED OVER

The bill (S. 1041) to amend the Civil Service Retirement Act of May 29, 1930, as amended, to provide for the inclusion in the computation of accredited service of certain periods of service rendered States or instrumentalities of States, and for other purposes, was announced as next in order.

Mr. PURTELL. Mr. President, I have no personal objection to this bill, but in view of the fact that the Civil Service Commission and the Budget Bureau have opposed it, I think it is not proper business to be considered on a call of the calendar, and I suggest that it be passed over.

The PRESIDING OFFICER. Objection being heard, the bill will be passed over.

DESERT LAND ENTRYMEN

The bill (S. 1177) for the relief of desert land entrymen whose entries are dependent upon percolating waters for reclamation was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted, etc., That the requirement of section 1 of the Desert Land Act of March 3, 1877 (19 Stat. 377), that the right to the use of water by a desert land entryman "shall depend upon bona fide prior appropriation" shall be waived in the case of all desert land entries which have heretofore been allowed and are subsisting on the effective date of this act, which are dependent upon percolating waters for their reclamation, and which are situated in States under the laws of which the percolating waters upon which the entries are dependent are not subject to the doctrine of prior appropriation.

PROTOTYPE AIRCRAFT DEVELOPMENT ACT

The bill (S. 2074) to extend for an additional 5 years the provisions of the act of September 30, 1950, entitled "An act to promote the development of improved transport aircraft by providing for the operation, testing, and modification thereof," was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted, etc., That section 7 of the act of September 30, 1950 (64 Stat. 1090), is amended by striking out "five" and inserting in lieu thereof "ten."

ESTABLISHMENT, MAINTENANCE, AND OPERATION OF AIDS TO MARITIME NAVIGATION

The Senate proceeded to consider the bill (S. 1378) to clarify and consolidate the authority to require the establishment, maintenance, and operation of aids to maritime navigation on fixed structures in or over navigable waters of the United States, which had been reported from the Committee on Interstate

and Foreign Commerce, with an amendment, on page 2, line 5, after the word "who", to strike out "willfully and knowingly", so as to make the bill read:

Be it enacted, etc., That section 85 of title 14, United States Code, is amended to read as follows:

"§ 85. Aids to maritime navigation on fixed structures; penalty

"The Secretary shall prescribe and enforce necessary and reasonable rules and regulations, for the protection of maritime navigation, relative to the establishment, maintenance, and operation of lights and other signals on fixed structures in or over navigable waters of the United States. Any owner or operator of such a structure, excluding an agency of the United States, who violates any of the rules or regulations prescribed hereunder, commits a misdemeanor and shall be punished, upon conviction thereof, by a fine of not exceeding \$100 for each day during which such violation continues."

SEC. 2. Section 18 of the Federal Water Power Act, as amended (U. S. C., 1946 edition, title 16, sec. 811), is further amended by striking out the words "Secretary of War" in the first sentence and inserting in lieu thereof the words "Secretary of the Department in which the Coast Guard is operating."

SEC. 3. The analysis of chapter 5 of title 14, United States Code, immediately preceding section 81 of such title, is amended by striking out the item "85. Failure to maintain lights; penalty" and inserting in lieu thereof the following: "85. Aids to maritime navigation on fixed structures; penalty."

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

RECONVEYANCE OF CERTAIN LANDS, ALBENI FALLS RESERVOIR

The bill (S. 598) to provide for adjustments in the lands or interest therein acquired for the Albeni Falls Reservoir project, Idaho, by the reconveyance of certain lands or interests therein to the former owners thereof was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted, etc., That (a), in order to provide for adjustments in the lands of interests in land heretofore acquired for the Albeni Falls Reservoir project to conform such acquisition to a lesser estate in lands now being acquired to complete the real estate requirements of the project, the Secretary of the Army is authorized to reconvey any such land or interests in land heretofore acquired to the former owners thereof whenever (1) he shall determine that such land or interest is not required for public purposes, (2) he shall have received a written statement from such agency or person as may be designated by the Governor of the State of Idaho that the reconveyance of such property is in the best interest of the State, and (3) he shall have received an application for reconveyance as hereinafter provided.

(b) Any such reconveyance of any such land or interest shall be made only after the Secretary (1) has given notice, in such manner (including publication) as he shall by regulation prescribe, to the former owner of such land or interest, and (2) has received an application for the reconveyance of such land or interest from such former owner, in such form as he shall by regulation prescribe, within a period of 90 days following the date of issuance of such notice.

(c) Any reconveyance of land or interest therein made under this act shall be subject to such exceptions, restrictions, and reser-

vations (including a reservation to the United States of flowage rights) as the Secretary may determine are in the public interest.

(d) Any land or interest therein reconveyed under this act shall be sold for an amount determined by the Secretary to be equal to the price for which the land was acquired by the United States, adjusted to reflect (1) any increase in the value thereof resulting from improvements to the land made by the United States, and (2) any decrease in the value thereof resulting from (A) any reservation, exception, restriction, and condition to which the reconveyance is made subject, and (B) any damage to the land or interest therein caused by the United States. In addition, the cost of any surveys necessary as an incident of such reconveyance shall be borne by the grantee.

(e) The requirements of this section shall not be applicable with respect to the disposition of any land, or interest therein, described in subsection (a) if the Secretary shall certify (1) that notice has been given to the former owner of such land or interest as provided in subsection (b), and that no qualified applicant has made timely application for the reconveyance of such land or interest, or (2) that within a reasonable time after receipt of a proper application for reconveyance of such land or interest the parties have been unable to reach a satisfactory agreement with respect to the reconveyance of such land or interest.

(f) As used in this section, the term "former owner" means the person for whom any land, or interest therein, was acquired by the United States, or if such person is deceased, his spouse, or if such spouse is deceased, his children.

SEC. 2. The Secretary of the Army may delegate any authority conferred upon him by this act to any officer or employee of the Department of the Army. Any such officer or employee shall exercise the authority so delegated under rules and regulations approved by the Secretary.

SEC. 3. Any proceeds from reconveyances made under this act shall be available for use in administering the provisions of this act and any surplus shall be covered into the Treasury of the United States as miscellaneous receipts.

SEC. 4. This act shall terminate 3 years after the date of its enactment.

DEPARTMENT OF COMMERCE APPROPRIATIONS, 1956

The bill (H. R. 6367) making appropriations for the Department of Commerce and related agencies for the fiscal year ending June 30, 1956, and for other purposes, was announced as next in order.

Mr. STENNIS. Mr. President, the bill which was the unfinished business before the Senate proceeded to a call of the calendar, has been disposed of on the calendar call. The bill which was just called is the bill making appropriations for the Department of Commerce for the fiscal year 1956. It is proposed to take up that bill at the end of the call of the calendar, with the understanding there will be no vote on it today. The Senator from Delaware [Mr. WILLIAMS] is interested in the bill, and that agreement has been had with him, but it is expected the Senate will proceed to the consideration of the bill, so that the Senator from Florida may make a statement concerning it. Debate may take place on the bill, and amendments may be offered to it, but no vote will be taken on the bill today.

Mr. President, I move that the bill be made the pending order of business at the end of the call of the calendar.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Mississippi to make the Department of Commerce appropriation bill the pending business at the close of the call of the calendar.

The motion was agreed to.

REMOVAL OF AN INEQUITY IN THE PAY OF CERTAIN POSTAL EMPLOYEES

The bill (H. R. 4659) to amend section 16 of the act entitled "An act to adjust the salaries of postmasters, supervisors, and employees in the field service of the Post Office Department," approved October 24, 1951 (65 Stat. 632; 39 U. S. C. 876c), was considered, ordered to a third reading, read the third time, and passed.

SUSPENSION OF FURTHER CALL OF THE CALENDAR

Mr. PURTELL. Mr. President, in view of the fact that the calendar committee on this side has not had an opportunity to study or review the reports on the four bills following on the calendar, I ask that the further call of the calendar be suspended.

The PRESIDING OFFICER. Without objection, the remaining bills on the calendar will go over to the next call of the calendar.

That completes the call of the calendar.

DEPARTMENT OF COMMERCE APPROPRIATIONS, 1956

The PRESIDING OFFICER. Pursuant to the motion heretofore agreed to the Chair lays before the Senate the Department of Commerce appropriation bill.

Senate proceeded to consider the bill (H. R. 6367) making appropriations for the Department of Commerce and related agencies for the fiscal year ending June 30, 1956, and for other purposes, which had been reported from the Committee on Appropriations with amendments.

Mr. STENNIS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Secretary will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STENNIS. Mr. President, I think the purpose of the quorum call has been served. Therefore, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MONROE in the chair). Without objection, it is so ordered.

Mr. DOUGLAS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Illinois will state it.

Mr. DOUGLAS. Has unanimous consent been given for the Senate to proceed to vote today on the bill? Or am I correct in understanding that the eminent Senator from Florida [Mr. HOLLAND] will

June 29, 1955

18. PERSONNEL. The Davis subcommittee of the Post Office and Civil Service Committee ordered reported to the full committee H. R. 3687, to permit inclusion of State service for computing the amount of annuity (p. D638).
- A subcommittee of the Judiciary Committee ordered favorably reported to the full committee H. R. 2383, amended, Inventive Contributions Awards Act of 1955 (p. D637).
19. LANDS. A subcommittee of the Interior and Insular Affairs Committee approved for reporting to the full committee H. R. 4308, H. R. 4303, and S. 1177, for the relief of desert-land entrymen whose entries are dependent upon percolating waters for reclamation (p. D637).

SENATE

20. DEBT LIMIT. The Finance Committee reported without amendment H. R. 6992, to extend for 1 year the existing temporary increase in the public-debt limit (S. Rept. 688) (p. 8102).
21. POSTAL RATES. Passed with amendment S. 1292, to readjust postal classification on educational and cultural materials (pp. 8076-80).
22. WILDLIFE. Passed as reported S. 756, to authorize the appropriation of accumulated receipts in the Federal-aid-to-wildlife-restoration fund established by the Pittman-Robertson Act and to authorize the expenditure of funds apportioned by a State under such act for the management of wildlife areas and resources (p. 8082).
23. PERSONNEL. The Finance Committee reported with amendment H. R. 5560, to make permanent the existing privilege of free importation of personal and household effects brought into the U. S. under Government orders (S. Rept. 690) (p. 8102).
- Passed as reported S. 1041, to provide for the inclusion in the computation of accredited service, for retirement purposes, of certain periods of service rendered States or instrumentalities of States (pp. 8075-6). The bill applies to certain Federal employees who in the past were employed on Federal-State projects financed wholly or in part by the Federal Government; it provides that such service shall be credited for retirement purposes provided: (1) the performance of such service is certified by the head of the executive department of the Federal Government which administers the law authorizing the program; (2) the employee has at least 5 years of Federal service in a position within the purview of the Act, other than in a position described in this bill, at the time of his retirement or death; and (3) the employee deposits to the credit of the civil-service retirement fund an amount equal to the sum which would have been deducted from his basic compensation had he been subject to the Civil Service Retirement Act, plus the requested interest.

As reported (see Digest 108), S. 59 makes retroactive to April 1, 1948, a 1949 amendment to the Civil Service Retirement Act extending to each retiring married female employee the privilege of naming her husband to receive a survivor annuity in event of her death, similar to the annuities which retiring male employees were able to provide for their wives through the 1948 amendment

Passed as reported S. 1792, to amend section 10 of the Federal Employees Group Life Insurance Act of 1954, authorizing the assumption of the insurance obligations of any nonprofit association of Federal employees with its members (pp. 8100-2). The bill would make possible the continuance of the life-insurance protection held by about 135,000 Federal employees, both active and retired, as members of various nonprofit beneficial associations through an

arrangement made by the Civil Service Commission and each interested association, whereby the Employees' Life Insurance Fund would assume the insurance obligations and receive the association's assets together with future premium payments. The bill would also authorize the Commission to insure obligations so assumed with the life-insurance company now underwriting the association insurance, or with any other company which is an insurer or reinsurer under the act.

Passed without amendment S. 1849, to provide for the granting of career-conditional and career appointments in the competitive civil service to indefinite employees who previously qualified for competitive appointment (pp. 8074-5). As reported (see Digest 102), S. 1849 provides "that indefinite employees (except employees whose salary rate is fixed by the act of July 6, 1945, as amended) who are serving on the effective date of enactment in positions in the competitive service, and who were so serving on January 23, 1955, would have their indefinite appointments converted to career-conditional or career appointments if they were certified and within reach for indefinite appointment on competitive civil-service registers appropriate for indefinite appointment to jobs they held between June 30, 1950, and January 23, 1955. Determination as to whether they would receive career or career-conditional appointments would depend upon their length of service during such period of time."

24. LEGISLATIVE PROGRAM. Sen. Johnson announced that today, following the call of the calendar for unobjected-to bills, consideration will be given to the following bills: to increase the public debt limit, free importation of personal effects from abroad; conference reports on defense and D. C. appropriations if received; and that on Fri. it is hoped the military construction bill can be considered (pp. 8065-6).

BILLS INTRODUCED

25. FARM PROGRAM. H. R. 7090, by Rep. Abbitt, to "further amend the Agricultural Adjustment Act of 1938;" to Agriculture Committee (p. 8151).
26. MONOPOLIES. H. R. 7096, by Rep. Roosevelt, to amend sections 3 and 4 of the Clayton Act to free those in commerce from restraints of trade and to allow small-business men freedom of choice in the conduct of their respective businesses as independent enterprises; to Judiciary Committee (p. 8151).
27. PROPERTY. H. R. 7098, by Rep. Wilson, Calif., establishing a general policy and procedures with respect to payments to State and local governments on account of Federal real property and tangible personal property; to Interior and Insular Affairs Committee (p. 8151).
- S. 2364, by Sen. Smathers (for Sen. Kennedy), "to amend the Federal Property and Administrative Service Act of 1949, as amended;" to Government Operations Committee (p. 8068). Remarks of author (pp. 8068-9).
- S. 2368, by Sen. Smathers (for Sen. Kennedy), to add a new title relating to real property management to the Federal Property and Administrative Services Act of 1949, as amended; to Government Operations Committee (p. 8068). Remarks of author (pp. 8068-9).
28. DONATION. H. R. 7109, by Rep. Watts, to establish a system of distribution of surplus agricultural commodities to unemployed persons; to Agriculture Committee (p. 8151).
29. STORAGE. S. 2365, by Sen. Smathers (for Sen. Kennedy), extending the authority of the General Services Administration with respect to warehouses and other storage facilities operated by civilian agencies of the Government; to Government Operations Committee (p. 8068). Remarks of author (pp. 8068-9).

July 5, 1955

12. AIR POLLUTION. Passed with amendment S. 928, to provide for research on, and control of, air pollution (pp. 8509-11). For provisions of the bill, see Digest 112.
13. WHEAT. Both Houses received from the Secretary of Agriculture a letter recommending that the present exemption of durum wheat from marketing quotas be extended for one year, that wheat growers be exempted from marketing quota penalties if all of the wheat produced on their farm is used for food, feed, or seed on the farm where produced, that expansion of the non-commercial wheat areas beyond the present 12 States be authorized, that the Secretary of Agriculture be authorized to dispose of not to exceed 100 million bushels annually of low grade wheat for feed at prices 10% above the support price for corn, and (although this can be done administratively) that the Department be authorized to discount for price supports certain varieties of wheat, especially those suitable primarily for feed purposes. Referred to the Agriculture Committee (pp. 8426, 8526).
14. LANDS. ~~Passed over without prejudice H. R. 4280, directing the Secretary of Agriculture to transfer certain submarginal lands to Clemson College, at the request of Rep. Cunningham (pp. 8477-8).~~
The Interior and Insular Affairs Committee ordered the following bills reported: ~~S. 1878, to extend for five years the authority to convey to Miles City, Mont., certain ARS lands in Custer County; S. 2097, to authorize the transfer to the Agriculture Department, for research purposes, of certain real property in St. Croix, V. I.; H. R. 4096, amended, to provide for the disposal of public lands within highway, telephone, and pipeline withdrawals in Alaska; and H. R. 4308, amended, for the relief of desert-land entrymen whose entries are dependent upon percolating waters for reclamation (p. D659).~~
15. FOODS; ANIMAL DISEASES. Passed over without prejudice H. R. 6991, to revise, codify, and enact into positive law title 21 of the United States Code, "Food, Drugs, and Cosmetics," at the request of Rep. Cunningham (p. 8482).
16. FARM LABOR. Rep. Rogers, Colo., gave notice that he intended to offer an amendment to H. R. 3822, the Mexican farm labor bill, when it is debated. The proposed amendment would provide for regulation of transportation of Mexican farm laborers (p. 8470).
17. APPROPRIATIONS. Received from the President a supplemental appropriation estimate for the Labor Department for the Mexican farm labor program (H. Doc. 200) (June 29.)
18. STATE COMPACTS. Passed without amendment S. 1007, in lieu of H. R. 3758, to provide that GSA receive authenticated copies of compact entered into between the States (pp. 8471-2). This bill is now ready for the President.
19. PAPERWORK STUDIES. Agreed to H. Res. 262, with amendments, providing that the House Administration Committee instead of the Subcommittee on Printing make studies of unnecessary Government printing and paperwork (pp. 8524-5).
20. SOIL SURVEYS. Both Houses received a report from the Secretary of the Interior on soil survey and land classification of the lands to be benefited by the rehabilitation of major facilities of the Medford and Rogue River Valley Irrigation Districts, Oregon. Referred to the Appropriations Committee (pp. 8427, 8526).

21. CIVIL DEFENSE. Received the fourth annual report of the Federal Civil Defense Administration. Referred to the Armed Services Committee (pp. 8526-7).
22. LEGISLATIVE PROGRAM. The "Daily Digest" states: On Wed., July 6, "the House will consider ... H. R. 6059, to authorize the President to enter into trade agreements with the Philippines and revise the 1946 Trade Agreement between the two countries; and also may act on H. R. 3822, to extend the Mexican farm labor program." (p. D659.)

BILLS INTRODUCED

23. EDUCATION; INFORMATION. S. 2410, by Sen. Smith, N. J., (for himself and others) to promote the foreign policy of the United States by amending the United States Information and Educational Exchange Act of 1948 (Public Law 402, 80th Cong.); to Foreign Relations Committee (p. 8427). Remarks of author (pp. 8431-3).
24. MINERALS. S. 2415, by Sen. Bible, to amend the Domestic Minerals Program Extension Act of 1953 in order to extend the programs to encourage the discovery, development, and production of certain domestic minerals; to Interior and Insular Affairs Committee (p. 8427).
25. LIVESTOCK. H. R. 7173, by Rep. Willis, to amend section 302 of the Packers and Stockyards Act of 1921 so as to make such act inapplicable to stockyards which engage exclusively in the sale of livestock on commission at public auction; to Agriculture Committee (p. 8527).

ITEMS IN APPENDIX

26. FOREIGN TRADE. Sen. Lehman stated that the "defense essentiality" provision of the Reciprocal Trade Extension Act has been used as a justification for the increased tariff on Swiss watches, and inserted some New York Journal of Commerce articles maintaining that watches are not essential to national defense (pp. A4859-61).
- Rep. Jonas inserted a Charlotte, N. C., Chamber of Commerce resolution condemning recent tariff cuts in Japanese textiles (p. A4869).
27. RECLAMATION; ELECTRIFICATION. Rep. Johnson, Wis., inserted an article from an REA journal describing an all-electric farm in Barron County, Wis. (p. A4862).
- Rep. Wilson, Calif., inserted an article by Rep. Hosmer giving strong arguments against the proposed Echo Park and Glen Park power projects, a part of the Colorado River storage project (pp. A4862-3).
- Rep. Lipscomb inserted a report by the Washington research office of the Council of State Chambers of Commerce which terms the Colorado River storage project "one of the most expensive but least economic water resource projects ever enacted upon by Congress", and gives estimates of each State's share of the cost of this project (pp. A4863-5).
- Rep. Dawson inserted a St. Louis Post-Dispatch article urging authorization of the upper Colorado River storage project in view of the elimination of the Echo Park Dam (p. A4882). He also inserted a Washington Post article along the same lines (pp. A4892-3).
- Rep. Evins inserted Brew Pearson's article describing a "secret meeting" of top Government officials which preceded the President's recent decision to investigate the Dixon-Yates power contract (pp. A4866-7).
- Rep. Hosmer inserted articles from newspapers in Idaho (p. A4881), Wisconsin (pp. A4882-3), and South Carolina (pp. A4889-90), criticizing the upper Colorado River storage project.

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(For Department Staff Only)

Issued July 8, 1955
For actions of July 7, 1955
84th-1st, No. 115

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HIGHLIGHTS: Senate committee reported bills to increase funds for Public Law 480 and transfer its administration to USDA; include onions under CEA; amend Farm Tenant Act; provide for USDA report on tobacco research program; request USDA report on tobacco research program; request USDA report on agricultural weather forecasting. Both Houses agreed to conference report on mutual security bill. House committee ordered reported bill to provide retirement credit for certain State service. House received conference report on public works appropriation bill.

HOUSE

- 1. APPROPRIATIONS.** Received the conference report on H. R. 6766, the public works appropriation bill, which includes funds for the Atomic Energy Commission, the Tennessee Valley Authority, certain functions of the Interior Department, and certain civil functions of the Army (H. Rept. 1085) (p. 8678-83).
Received and agreed to the conference report on H. R. 6829, to authorize certain construction at military, naval, and Air Force installations, including a provision for financing certain military housing by furnishing surplus agricultural commodities (H. Rept. 1083) (pp. 8661-71).
- 2. FOREIGN AID.** Both Houses agreed to the conference report on S 2090, the mutual security aid bill (pp. 8633-5, 8656-9). This bill is now ready for the President. See Digest 114 for statement.
- 3. FOREIGN TRADE.** Passed as reported H. R. 6059, the bill to revise the Philippine Trade Agreements Act (pp. 8648-54).
- 4. PERSONNEL.** The Post Office and Civil Service Committee ordered reported the following bills: H. R. 6590, to prohibit Federal employment to disloyal persons or to those who believe in the right to strike against the Federal

Government; S. 1041, to include certain State service in computation of accrued service toward annuity; S. 1792, to amend the Federal Employees Group Life Insurance Act, regarding assumption of funds of non-profit association of Federal employees (p. D676).

The Post Office and Civil Service Committee recommended that a resolution be introduced giving the committee authority to investigate postal and civil-service matters under its jurisdiction (p. D676).

5. MINING; FORESTS. The Rules Committee reported a resolution waiving points of order and providing for debate on H. R. 6373, to extend programs to encourage the discovery, development, and production of certain domestic minerals (p. 8659).
6. ORGANIZATION. Rep. Reece inserted the statement of Mr. Hoover on June 30, 1955 which marked the end of his chairmanship of the Hoover Commission (pp. 8677-8).
7. RECLAMATION. The Interior and Insular Affairs Committee reported with amendment H. R. 4308, for the relief of desert land entrymen whose entries are dependent upon percolating waters for reclamation (H. Rept. 1084) (p. 8684).
8. LEGISLATIVE PROGRAM. The "Daily Digest" states that the House program will be as follows: "Mon., July 11, the mutual security appropriation bill; Tues., July 12, the Farm Credit Act of 1955; Wed., July 13 and balance of the week, minimum wage bill, Social Security Act amendments for 1955, H. R. 6373, extension of Domestic Minerals Program Act of 1953, and H. R. 7089, the Servicemen's and Veterans' Survivor Benefits Act." (p. D677).
9. WHEAT TRANSPORTATION. Rep. Cannon deplored the shortage of transportation facilities for the new wheat crop and suggested that the Department not ship old grain during the period when the new crop is being prepared for shipment (p. 8471, July 5).
10. FORESTRY. Passed as reported H. R. 605, which would abolish the 80-rod reservation of public ownership between public land claims located on shore waters in Alaska (pp. 8489-90, July 5).
11. ACCOUNTING. As reported (June 29), H. R. 7035 authorizes the Comptroller General to authorize reimbursement from available appropriations or funds of disbursing or other accountable officers or agents for amounts paid by them or in their behalf in restitution of an actual physical loss or deficiency. This would apply to amounts paid by or on behalf of such officers since August 1, 1947, the date of the existing law now authorizing relief but not reimbursement.
As reported (June 29), H. R. 7034 authorizes the Comptroller General to relieve a disbursing officer of accountability and responsibility, and to allow credit in his official disbursing accounts for a deficiency, when it has been determined that such payments were not the result of bad faith or lack of due care on the part of such disbursing officer for whom relief is sought. It further provides that relief may be denied in any case in which the Comptroller General determines that the department or agency concerned has not diligently pursued collection action in accordance with procedures prescribed by the Comptroller General.
12. ADJOURNED until Mon., July 11 (p. 8684).

DESERT LAND ENTRYMEN WHOSE ENTRIES ARE DEPENDENT UPON PERCOLATING WATERS FOR RECLAMATION

JULY 7, 1955.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ENGLE, from the Committee on Interior and Insular Affairs, submitted the following

R E P O R T

[To accompany H. R. 4308]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H. R. 4308) for the relief of desert land entrymen whose entries are dependent upon percolating waters for reclamation, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

The amendments are as follows:

Page 1, line 10, strike the word "States" and insert in lieu thereof the words "the State of Arizona".

Page 1, line 12, change the period to a comma and add the words "but are usable under State law for irrigation and reclamation purposes."

H. R. 4308 was introduced by Mr. Udall. An identical bill was introduced by Mr. Rhodes.

PURPOSE

The Desert Land Act of March 3, 1877, requires that the right of desert land entrymen to the use of water for reclaiming their entries "shall depend upon bona fide prior appropriation." This bill, if enacted, would waive this requirement in the case of all desert land entries which have heretofore been allowed in the State of Arizona and which are dependent upon percolating waters for their reclamation. As introduced, the legislation would have been applicable to all States under the laws of which percolating waters are not subject to the doctrine of prior appropriation. On the basis of testimony that desert land entries in Arizona were the only ones presently involved, the legislation was amended by the committee to make it applicable only to the State of Arizona.

NEED

As a result of a recent decision by the Supreme Court of Arizona with respect to the law of that State governing percolating waters, a question has arisen with respect to the meaning of this "water rights" provision of the Desert Land Act and its effect on desert land entries in the State of Arizona. The Arizona Supreme Court's decision that percolating waters in that State are not subject to the doctrine of prior appropriation raised the question of whether such desert land entries dependent on percolating waters could be patented. The Acting Solicitor of the Department of the Interior has rendered an opinion holding that such entries cannot be patented under the Desert Land Act. This means that approximately 158 desert land entries currently subsisting in Arizona could not be patented and therefore the entrymen would lose the fruits of their labor and expenditures. This bill would waive the "water rights" provision in the original act for these 158 desert land entries and would permit them to be patented. The entrymen would remain subject to the requirements of the Desert Land Act in all other respects. The bill applies only to existing entries and would not permit future desert land entries to be made in Arizona which are dependent on percolating waters.

DEPARTMENT'S REPORT

The Department's report on the legislation recommending its enactment follows:

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington 25, D. C., April 15, 1955.

Hon. CLAIR ENGLE,
*Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington 25, D. C.*

MY DEAR MR. ENGLE: This is in reply to your request for the views of this Department on H. R. 4308, which is identical to H. R. 4303, a bill for the relief of desert land entrymen whose entries are dependent upon percolating waters for reclamation.

I recommend that H. R. 4308 or H. R. 4303 be enacted.

Section 1 of the Desert Land Act of March 3, 1877 (43 U. S. C., 1952 ed., sec. 321), requires that the right of desert land entrymen to the use of water for reclaiming their entries "shall depend upon bona fide prior appropriation." H. R. 4308, if enacted, would waive this requirement in the case of all desert land entries which have heretofore been allowed and are subsisting on the effective date of the statute, which are dependent upon percolating waters for their reclamation, and which are situated in States under the laws of which the percolating waters upon which the entries are dependent are not subject to the doctrine of prior appropriation.

During the past year, a question has arisen in the Department with respect to the meaning of this provision of the Desert Land Act and its effect upon desert land entries in the State of Arizona which are dependent for irrigation upon percolating waters; i. e., underground water which does not flow in a well-defined channel with banks. The question arose primarily as a result of a recent decision by the Supreme Court of Arizona with respect to the law of the State governing percolating waters. In that decision, *Bristor v. Cheatham* (75 Ariz. 227, 255 P. 2d 173), decided on March 14, 1953, the Arizona court held that percolating waters in that State are not subject to the doctrine of prior appropriation but are subject only to the doctrine of reasonable use.

The Bristor decision raised the question whether desert land entries for lands in Arizona could be allowed or patented where such entries are dependent on percolating waters for reclamation. The question was referred to the Acting Solicitor of the Department who has rendered an opinion holding that such entries cannot be allowed or patented under the Desert Land Act since the right of

the entrymen or the applicants for entry to use percolating waters does not depend upon prior appropriation. A copy of the Acting Solicitor's opinion M-36263, dated February 23, 1955, is attached. It discusses the problem in detail.

According to the Bureau of Land Management of this Department, there are approximately 158 desert land entries in Arizona which have been allowed and are currently subsisting but which are dependent on percolating waters for reclamation. The entries were applied for in good faith and the entrymen have apparently made expenditures and performed work with a view to securing patents to the entries. In many cases the expenditures have been substantial. However, under the law as set forth in the Acting Solicitor's opinion, the entries cannot go to patent so long as the percolating waters on which they are dependent are not subject to appropriation. This means that in time, as the statutory life of the entries expires, the entrymen will lose the fruits of their labor and expenditures. Immediately, because of this prospect, the entrymen are uncertain as to whether to proceed with their work on the entries.

In these circumstances, it seems only fair and equitable that the entrymen should be allowed to perfect their entries regardless of the requirement in the Desert Land Act that they have a water right dependent upon prior appropriation. H. R. 4308 would accomplish this purpose. It would simply waive in the case of these entries the requirement that the right to use of water depends on prior appropriation. In all other respects, such as reclamation and expenditures, the entrymen would remain subject to the requirements of the Desert Land Act.

The problem under consideration has so far arisen only in Arizona. H. R. 4308 has, however, been drawn on a general basis and would thus take care of any similar problem in other States to which the Desert Land Act applies.

It should be noted that the bill applies only to existing entries which have been allowed. The bill will not permit future desert land entries to be made in Arizona which are dependent on percolating waters. Whether broader legislation should be enacted is a matter on which the Department takes no position at this time. The Department's immediate concern is in affording relief to existing entrymen who have an immediate problem on their hands, and the Department urges that such relief be granted without delay.

The Bureau of the Budget has advised that there is no objection to the submission of this report to your committee.

Sincerely yours,

ORME LEWIS,
Assistant Secretary of the Interior.

M-36263

FEBRUARY 23, 1955.

VALIDITY OF DESERT LAND APPLICATIONS AND ENTRIES IN ARIZONA DEPENDENT ON PERCOLATING WATER FOR RECLAMATION

Desert land entry: Water right

When Congress provided in the Desert Land Act that the right to use of water by the entryman "shall depend upon bona fide prior appropriation," Congress used the words "prior appropriation" as words of art having reference to the well-established doctrine of prior appropriation then obtaining in the Western States and Territories.

Desert land entry: Water right

Whether water is subject to prior appropriation as required in the Desert Land Act is a matter governed by State law.

Water and water rights: State laws

Under the second opinion of the Arizona Supreme Court in the case of *Bristor v. Cheatham*, percolating waters are not subject to the doctrine of prior appropriation but only to the doctrine of reasonable use.

Desert land entry: Water right

Applications for desert land entries in Arizona cannot be allowed, and allowed desert land entries in that State cannot be patented, where the entries are dependent upon percolating waters for reclamation.

4 DESERT LAND ENTRYMEN DEPENDENT UPON PERCOLATING WATERS

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington 25, D. C., February 23, 1955.

Memorandum.

To: Director, Bureau of Land Management.

From: Acting Solicitor.

Subject: Validity of desert land applications and entries in Arizona dependent on percolating water for reclamation.

You have requested my opinion as to whether, in view of the decision by the Supreme Court of Arizona in the case of *Bristor v. Cheatham* (75 Ariz. 227, 255 P. 2d 173 (1953)), applications for desert land entries in that State can be allowed or allowed desert land entries in that State can be patented where reclamation of the entry depends upon percolating water.

As the term "percolating water" is used in your request and this opinion, it means underground water which does not comprise or is not part of an underground stream which has a well-defined channel and banks and a current.

Section 1 of the Desert Land Act of March 3, 1877 (43 U. S. C., 1952 ed., sec. 321), provides in part as follows:

"* * * it shall be lawful for any citizen of the United States * * * to file a declaration * * * that he intends to reclaim a tract of desert land * * * by conducting water upon the same * * * *Provided, however,* That the right to the use of water by the person so conducting the same * * * shall depend upon bona fide prior appropriation: * * * and all surplus water over and above such actual appropriation and use, together with the water of all, lakes, rivers and other sources of water supply upon the public lands and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, mining and manufacturing purposes subject to existing rights" (19 Stat. 377).

The answer to your question depends upon the interpretation to be given to the specific portion of the quotation from the act which requires that "the right to the use of water by the person so conducting the same * * * shall depend upon bona fide prior appropriation."

In *California Oregon Power Co. v. Beaver Portland Cement Co.* (295 U. S. 142 (1935)) the United States Supreme Court held that a homestead patent issued in 1885 for land bordering on a stream did not carry with it the common law riparian right to have the stream flow by the land in its accustomed channel without substantial diminution. This holding was based on the Court's interpretation of the provision of section 1 of the Desert Land Act following the clause just quoted and beginning with "and all surplus water," etc. Although the Court was not directly concerned with the clause under consideration here, it discussed at length the background of the Desert Land Act and made a number of statements which are very illuminating with respect to the point at issue. The more significant statements follow:

"For many years prior to the passage of the act of July 26, 1866 * * * the right to the use of waters for mining and other beneficial purposes in California and the arid region generally was fixed and regulated by local rules and customs. The *first appropriator* of water for a beneficial use was uniformly recognized as having the *better right* to the extent of his actual use. The common law with respect to riparian rights was not considered applicable, or, if so, only to a limited degree. * * * The rule generally recognized throughout the States and Territories of the arid region was that the acquisition of water by *prior appropriation* for a beneficial use was entitled to protection * * *" (p. 154). [Emphasis added.]

"That body [the Congress] thoroughly understood that an enforcement of the common-law rule, by greatly retarding if not forbidding the diversion of waters from their accustomed channels, would disastrously affect the policy of dividing the public domain into small holdings and effecting their distribution among innumerable settlers. In respect of the area embraced by the desert-land States, with the exception of a comparatively narrow strip along the Pacific seaboard, it had become evident to Congress, as it had to the inhabitants, that the future growth and well-being of the entire region depended upon a *complete adherence* to the rule of appropriation for a beneficial use as the *exclusive criterion* of the right to the use of water" (p. 157). [Emphasis added.]

"In the light of the foregoing considerations, the Desert Land Act was passed, and in their light it must now be construed" (p. 158).

These extracts from the *Power Co.* case leave little doubt that the rule of prior appropriation was a well-established doctrine of water law in the Western States

and Territories at the time the Desert Land Act was passed and that, when Congress provided in the act that the right to use of water by a desert land entryman "shall depend upon bona fide prior appropriation," Congress used the words "prior appropriation" as words of art having a clear and precise meaning.

The question then presents itself whether the right to appropriate water for the reclaiming of a desert land entry is a matter governed by State law or Federal law. The Power Co. case provides the answer. The Court stated in that case:

"As the owner of the public domain, the Government possessed the power to dispose of land and water thereon together, or to dispose of them separately. * * * The fair construction of the provision now under review¹ is that Congress intended to establish the rule that for the future the land should be patented separately; and that all nonnavigable waters thereon should be reserved for the use of the public *under the laws of the States and Territories named*" (p. 162). [Emphasis added.]

"Nothing we have said is meant to suggest that the [Desert Land] act, as we construe it, has the effect of curtailing the power of the States affected to legislate in respect of waters and water rights as they deem wise in the public interest. What we hold is that following the act of 1877, if not before, all nonnavigable waters then a part of the public domain became publici juris, *subject to the p'enary control of the designated States*, including those since created out of the Territories named, with the right in each to determine for itself, to what extent the rule of appropriation or the common-law rule in respect of riparian rights should obtain. * * * The Desert Land Act does not bind or purport to bind the States to any policy. It simply recognizes and gives sanction, insofar as the United States and its future grantees are concerned, to the State and local doctrine of appropriation, and seeks to remove what otherwise might be an impediment to its full and successful operation" (pp. 163-164). [Emphasis added.]

It is clear then that whether a desert land entry in Arizona can be based upon percolating water depends upon whether, under the law of Arizona, percolating water is subject to the doctrine of prior appropriation.

This question was settled only relatively recently in the case of *Bristor v. Cheatham*, supra. To appreciate the full significance of that case, a brief consideration of the history of the Arizona law on percolating water is necessary. The first pronouncement by the Arizona Supreme Court on the subject of percolating water apparently was in the case of *Howard v. Perrin* (76 Pac. 460 (1904), aff'd 200 U. S. 71 (1906)). In that case, the court stated that percolating water, as distinguished from water in an underground stream, belonged to the owner of the soil and was not subject to appropriation by another.

In *Maricopa County Municipal Water Conservation District No. 1 et al. v. Southwest Cotton Co. et al.* (4 P. 2d 369 (1931)), the Arizona court decided to treat the subject of underground water as a matter of first impression. In a lengthy opinion, the court concluded that "our holding in *Howard v. Perrin*, supra, that percolating subterranean waters were not subject to appropriation, was and still is the law of Arizona" (4 P. 2d, at p. 376).

Then came the case of *Bristor v. Cheatham*. This was an action by the plaintiffs to restrain the defendants from diverting water which the plaintiffs were pumping from domestic wells on their property. The plaintiffs alleged as a first count that the defendants had sunk a number of large wells on defendants' property to a common source of underground water underlying the lands of both and were pumping and conveying the water 3 miles distant to reclaim other land owned by the defendants, and that this withdrawal of water was drying plaintiffs' wells. In the second count, the plaintiffs alleged that the waters from which their wells were supplied were taken from an underground stream. The action was dismissed on both counts by the lower court.

When the case came before the Supreme Court of Arizona, the court first held on January 12, 1952, that its ruling in *Howard v. Perrin* was dictum and contrary to the Desert Land Act; it overruled that case and held that percolating waters are subject to the doctrine of prior appropriation (*Bristor v. Cheatham*, 240 P. 2d 185). A rehearing was granted, following which the court reversed itself on March 14, 1953 (255 P. 2d 173). The court said:

"The State of Arizona through its legislature has adopted its policy and local doctrine to the effect that ground waters are not subject to appropriation. It seems the only answer, therefore, is that a prior right to the use of ground waters cannot now be acquired and never could have been acquired under the law of

¹ The clause in sec. 1 of the act commencing with "and all surplus water", etc.

prior appropriation. We hold, therefore, that such waters are not subject to *any law of appropriation*" (255 P. 2d, at p. 177). [Emphasis added.]

The court went on to hold that the owner of land overlying percolating water has a right to use the water subject to the doctrine of reasonable use, as distinguished from the doctrine of correlative rights. Under the latter doctrine, a landowner would be limited to his proportionate share of the percolating water underlying his land and the lands of his neighbors. Under the doctrine of reasonable use, a landowner may use, without any liability to an adjoining user, as much of the percolating water as he can reasonably put to a beneficial use on his land even though it exceeds his proportionate share of the water. (See 55 A. L. R. 1385 and 109 A. L. R. 395.)

It is plain from the two opinions in the *Bristor* case that the doctrine of prior appropriation is diametrically opposed to the doctrine of reasonable use. Under the first doctrine, a prior appropriator acquires a legal right to a definite quantity of water which cannot be diverted by any subsequent appropriator even though the latter could put the water to a beneficial use. Under the second doctrine, a prior user of water acquires no right to the quantity of water used. Any subsequent user of water, by drilling a larger well or installing a more powerful pump, can, without liability, drain him dry so long as the water is put to a beneficial use by the subsequent user.

I find it impossible therefore to interpret the clause in the Desert Land Act which requires that "the right to the use of water * * * shall depend upon bona fide prior appropriation" as encompassing the doctrine of reasonable use as set forth in the second *Bristor* opinion.

The Department's regulations do not sanction the allowance or patenting of a desert land entry which depends upon percolating water which is subject only to the doctrine of reasonable use. The pertinent regulations currently in effect (43 C. F. R. 232.13; 19 F. R. 9084), which has been unchanged since its adoption on May 18, 1916 (Circ. 474, 45 L. D. 345, 351), provides in part as follows:

"SEC. 232.13 *Evidence of water rights required with application.* No desert-land application will be allowed unless accompanied by evidence satisfactorily showing either that the intending entryman has already acquired by appropriation, purchase, or contract a right to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought, or that he has initiated and prosecuted, as far as then possible, appropriate steps looking to the acquisition of such a right. * * * All applications not accompanied by the evidence above indicated will be rejected."

The requirement in the regulation is clear that an applicant must acquire, or take steps to acquire, a legal right to the permanent use of sufficient water to reclaim his entry. The same requirement is stated in the regulation dealing with the submission of final proof (43 C. F. R. 232.32; 19 F. R. 9086).

As we have seen, a landowner has no legal assurance of a permanent supply of water under the doctrine of reasonable use. His "right" to use percolating water, unlike the right of a prior appropriator, is always subject to diminution or abrogation by a subsequent user of the water.

It is my opinion, therefore, upon the basis of the Desert Land Act and the second opinion of the Supreme Court of Arizona in *Bristor v. Cheatham*, that an application for a desert land entry on land in Arizona cannot be allowed, and that a patent cannot be issued for such an entry which has been allowed, where the entry is dependent upon percolating water for reclamation.

J. RUEEL ARMSTRONG, *Acting Solicitor.*

COMMITTEE'S RECOMMENDATION

The Interior and Insular Affairs recommends that H. R. 4308, as amended, be enacted.



84TH CONGRESS
1ST SESSION

H. R. 4308

[Report No. 1084]

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 23, 1955

Mr. UDALL introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

JULY 7, 1955

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in italic]

A BILL

For the relief of desert land entrymen whose entries are dependent upon percolating waters for reclamation.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the requirement of section 1 of the Desert Land Act of
4 March 3, 1877 (19 Stat. 377), that the right to the use of
5 water by a desert land entryman "shall depend upon bona
6 fide prior appropriation" shall be waived in the case of all
7 desert land entries which have heretofore been allowed and
8 are subsisting on the effective date of this Act, which are
9 dependent upon percolating waters for their reclamation, and
10 which are situated in States *the State of Arizona* under the
11 laws of which the percolating waters upon which the entries

A BILL

For the relief of desert land entrymen whose entries are dependent upon percolating waters for reclamation.

By Mr. UDALL

FEBRUARY 23, 1955

Referred to the Committee on Interior and Insular Affairs

JULY 7, 1955

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

1 are dependent are not subject to the doctrine of prior
2 appropriation *but are usable under State law for irriga-*
3 *tion and reclamation purposes.*

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(For Department Staff Only)

Issued July 19, 1955
For actions of July 18, 1955
84th-1st, No. 120

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For Highlights see page 9.

HOUSE

1. FOREIGN AFFAIRS. Both Houses received the President's annual report on U. S. participation in the United Nations (H. Doc. 219) (pp. 9153, 9231).
2. RESERVE FORCES. House conferees were appointed on H. R. 7000, the reserve forces bill (pp. 9232, 9234). Senate conferees have not yet been appointed.
3. LAND TRANSFER. Passed as reported H. R. 4280, conveying certain submarginal lands to Clemson College, S. C. (pp. 9235-6).
Passed as reported H. J. Res. 276, authorizing the Texas Hill Country Development Foundation to convey certain land to Kerr County, Tex., and such county to convey a portion thereof to the State, for extension work (p. 9263).
Passed as reported H. R. 4096, providing for the disposal of public lands within highway, telephone, and pipeline withdrawals in Alaska (p. 9264).
Passed without amendment S. 1878, extending for five years the authority to transfer certain ARS lands to Miles City, Mont. (p. 9265). Ready for President.
Both Houses received a draft of proposed legislation from the Secretary of Agriculture, "to authorize an exchange of land at the Agricultural Research Center;" to Agriculture Committees (pp. 9154, 9338).

The Agriculture Committee reported without amendment H. J. Res. 112, to release reversionary rights to improvements on a three acre tract of former FHA lands in Orangeburg County, S. C. (H. Rept. 1193) (p. 9338).

4. LANDS. Passed with amendment S. 1177, after substituting in the bill the language of H. R. 4308, which was subsequently laid on the table (p. 9265). The bill as passed provides for the relief of desert land entrymen whose entries are dependent upon percolating water for reclamation.
5. FOOD AND DRUGS; ANIMAL DISEASES. Passed without amendment H. R. 6991, to amend certain sections of Title 21 of the Food and Drug Act (pp. 9237-61). A statement from the USDA was inserted in the Record by Rep. Byrnes, Wis., to the effect that certain amendments were contemplated by USDA and would be brought to the attention of the Senate Judiciary Committee.
6. SURPLUS PROPERTY. Passed with amendment S. 614, after substituting in the bill the language of H. R. 3757, which was subsequently laid on the table. The bill as passed authorizes GSA to donate certain property to the American National Red Cross (pp. 9261-2).
Rep. Brooks, Tex., discussed H. R. 7227, to donate surplus property to civil defense organizations (p. 9239).
7. REAL PROPERTY. Passed without amendment S. 2097, to authorize the transfer of certain property for research purposes from the Virgin Islands Corporation to the USDA (p. 9264). This bill will now be sent to the President.
8. SOIL CONSERVATION. The Agriculture Committee reported without amendment S. 1167, to specifically provide for conservation payments to farmers who, in order to benefit their own lands, carry out conservation practices on Federal lands (H. Rept. 1192) (p. 9338).
9. WATER CONSERVATION. The Agriculture Committee reported without amendment H. R. 7236, to amend the Soil Conservation and Domestic Allotment Act with respect to water-conservation practices (H. Rept. 1199) (p. 9339).
10. MARKETING. The Agriculture Committee reported with amendment H. R. 5337, to amend the provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities (H. Rept. 1196) (p. 9338).
11. CCC. The Agriculture Committee reported without amendment H. R. 7252, to permit sale of CCC stock of basic and storable nonbasic agricultural commodities without restriction, where similar commodities are exported in raw or processed form (H. Rept. 1203) (p. 9339).
12. RESEARCH; DISEASE CONTROL. The Agriculture Committee ordered the following bills reported on Fri., July 15: S. 1166, to permit imports from the British Virgin Islands into the U. S. Virgin Islands for slaughter only, cattle and poultry which have been freed from tick infection; and S. 1759, amended, relating to appropriation of Federal funds for support of agricultural experiment stations in the States, Alaska, Hawaii, and Puerto Rico (p. D723).
13. INTERGOVERNMENTAL RELATIONS. The Legislative Reporting Staff has a few copies, for lending and reference purposes, of study committee reports, etc., of the Commission on Intergovernmental Relations, as follows: "Federal Aid to Airports," "Natural Resources and Conservation," "Twenty-five Federal Grant-in-Aid Programs," "Federal Aid to Public Health," "Federal Aid to Highways," "Natural Disaster Relief," "Payments in Lieu of Taxes and Shared Revenues,"

(c) Any reconveyance of land or interest therein made under this act shall be subject to such exceptions, restrictions, and reservations (including a reservation to the United States of flowage rights) as the Secretary may determine are in the public interest.

(d) Any land or interest therein reconveyed under this act shall be sold for an amount determined by the Secretary to be equal to the price for which the land was acquired by the United States, adjusted to reflect (1) any increase in the value thereof resulting from improvements made thereon by the United States (the Government shall receive no payment as a result of any enhancement of values resulting from the construction of the Demopolis lock and dam project), or (2) any decrease in the value thereof resulting from (A) any reservation, exception, restriction, and condition to which the reconveyance is made subject, and (B) any damage to the land or interest therein caused by the United States. In addition, the cost of any surveys necessary as an incident of such reconveyance shall be borne by the grantee.

(e) The requirements of this section shall not be applicable with respect to the disposition of any land, or interest therein, described in subsection (a) if the Secretary shall certify that notice has been given to the former owner of such land or interest as provided in subsection (b) and that no qualified applicant has made timely application for the reconveyance of such land or interest.

(f) As used in this section, the term "former owner" means the person from whom any land, or interest therein, was acquired by the United States, or if such person is deceased, his spouse, or if such spouse is deceased, his children.

Sec. 2. The Secretary of the Army may delegate any authority conferred upon him by this act to any officer or employee of the Department of the Army. Any such officer or employee shall exercise the authority so delegated under rules and regulations approved by the Secretary.

Sec. 3. Any proceeds from reconveyances made under this act shall be available for use in administering the provisions of this act and any surplus shall be covered into the Treasury of the United States as miscellaneous receipts.

Sec. 4. This act shall terminate 3 years after the date of its enactment.

With the following committee amendment:

Page 4, line 1, strike out all of section 3 and insert "Any proceeds from sales made under this act shall be converted into the Treasury of the United States as miscellaneous receipts."

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

DESERT LAND ENTRYMEN WHOSE ENTRIES DEPEND UPON PERCOLATING WATERS FOR RECLAMATION

The Clerk called the bill (H. R. 4308) for the relief of desert land entrymen whose entries are dependent upon percolating waters for reclamation.

The SPEAKER pro tempore. Is there objection to the present consideration of the bill?

Mr. GROSS. Reserving the right to object, Mr. Speaker, and I shall not object, I am curious to know what is meant

by "percolating water" in connection with reclamation.

The only percolating water I know of is that in a coffee pot.

Mr. ASPINALL. Percolating water is water which goes somewhere without a well-directed channel.

Mr. GROSS. I thank the gentleman. There being no objection, the Clerk read the bill, as follows:

Be it enacted, etc., That the requirement of section 1 of the Desert Land Act of March 3, 1877 (19 Stat. 377), that the right to the use of water by a desert land entryman "shall depend upon bona fide prior appropriation" shall be waived in the case of all desert land entries which have heretofore been allowed and are subsisting on the effective date of this act, which are dependent upon percolating waters for their reclamation, and which are situated in States under the laws of which the percolating waters upon which the entries are dependent are not subject to the doctrine of prior appropriation.

With the following committee amendments:

Page 1, line 10, strike out "States" and insert "the State of Arizona."

Page 2, line 2, after the word "appropriation", insert "but are usable under State law for irrigation and reclamation purposes."

The committee amendments were agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

Mr. ASPINALL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill S. 1177, a similar bill, strike out everything after the enacting clause and insert the provisions of the House bill just passed.

There being no objection, the Clerk read the Senate bill, as follows:

Be it enacted, etc., That the requirement of section 1 of the Desert Land Act of March 3, 1877 (19 Stat. 377), that the right to the use of water by a desert land entryman "shall depend upon bona fide prior appropriation" shall be waived in the case of all desert land entries which have heretofore been allowed and are subsisting on the effective date of this act, which are dependent upon percolating waters for their reclamation, and which are situated in States under the laws of which the percolating waters upon which the entries are dependent are not subject to the doctrine of prior appropriation.

The SPEAKER. The Clerk will report the amendment.

The Clerk read as follows:

Strike out all after the enacting clause and insert the provisions of H. R. 4308 as amended.

The amendment was agreed to.

The bill was ordered to be read a third time, was read a third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H. R. 4308), was laid on the table.

CONVEYANCE OF CERTAIN LANDS TO MILES CITY, MONT.

The Clerk called the bill (S. 1878) to amend the act authorizing the conveyance of certain lands to Miles City, Mont.,

in order to extend for 5 years the authority under such act.

There being no objection, the Clerk read the bill, as follows:

Be it enacted, That section 6 of the act entitled "An act to authorize the conveyance to the city of Miles City, State of Montana, certain lands in Custer County, Mont., and for other purposes," approved June 16, 1950 (64 Stat. 233), is amended by striking out "5 years" and inserting in lieu thereof "10 years."

The bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

RELEASE BY THE UNITED STATES OF ITS RIGHTS AND INTERESTS IN CERTAIN LAND LOCATED IN SAGINAW COUNTY, MICH.

The Clerk called the bill (H. R. 622) to provide for the release by the United States of its rights and interests in certain land located in Saginaw County, Mich.

There being no objection, the Clerk read the bill, as follows:

Be it enacted, etc., That the Secretary of the Interior is authorized and directed to donate, convey, release, and relinquish to the city of Saginaw, Mich., all the rights and interests which the United States may have in certain land in Saginaw County by reason of the reservation to the United States (under article 7 of the treaty made with the Chippewa Nation of Indians in 1319 (7 Stat. 205)), of the right to construct roads through such land. Such land, which was granted by the United States to James Riley in 1823 pursuant to such treaty and subject to such reservation, contains approximately 640.0 acres and is more particularly described as follows:

Beginning at a post on the bank of the Saginaw River, the northwest corner of the fraction of section 25, east of the Saginaw River in township 12 north of range 4 east from which an ash 10 inches in diameter bears south 24 degrees east distant 20 links and a maple 7 inches in diameter bears north 18 degrees west distant 12½ links, thence east 115 chains and 80 links to a post on the line between ranges 4 and 5 east from which an elm 20 inches in diameter bears south 17 degrees west distant 6 links, and an ironwood 8 inches in diameter bears north 17 degrees east distant 6 links; thence north 62 chains to a post from which a sugartree 8 inches in diameter bears north 26 degrees east distant 15 links, and a white oak 36 inches in diameter bears south 16 degrees 30 minutes east distant 44 links, thence west 72 chains and 46 links to a post on the east bank, Saginaw River, from which a maple 12 inches in diameter bears south 62 degrees west distant 20 links, and an ash 12 inches in diameter bears north 64 degrees east distant 113 links, thence up the said river with the meanders thereof to the place of beginning.

With the following committee amendments:

Page 1, line 3, strike out all of page 1 and the words "such land" on page 2, and insert "That the United States hereby relinquishes to the owner or owners of certain lands in Saginaw County all rights which it may have under article 7 of the treaty with the Chippewa Nation of Indians in 1819 (7 Stat. 205) to construct roads through such land."

Page 2, line 7, after the word "treaty", strike out "and subject to such reservation."

The committee amendments were agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

PROVIDING FOR THE LEASING BY INDIAN OWNERS OF RESTRICTED INDIAN LANDS

The Clerk called the bill (H. R. 7157) providing for the leasing by Indian owners of restricted Indian lands.

There being no objection, the Clerk read the bill, as follows:

Be it enacted, etc., That any restricted Indian lands, whether tribally or individually owned, may be leased by the Indian owners, with the approval of the Secretary of the Interior for a term of not to exceed 25 years, and with the consent of both parties such leases may include provisions authorizing their renewal for one additional term of not to exceed 25 years, and all leases and renewals shall be made under such terms and regulations as may be prescribed by the Secretary of the Interior.

SEC. 2. Restricted lands of the deceased Indians may be leased under this act for the benefit of their heirs or devisees, in the circumstances and by the persons prescribed in the act of July 8, 1940 (54 Stat. 745; 25 U. S. C., 1946 edition, sec. 380, as amended): *Provided*, That if the authority of the Secretary under this section is delegated to any subordinate official, then any heir or devisee shall have the right to appeal the action of any such official to the Secretary under such rules and regulations as he may prescribe.

SEC. 3. The act of March 3, 1909 (35 Stat. 783; 25 U. S. C. 396) is amended by inserting before the period at the end thereof the following proviso: "*Provided*, That if the said allottee is deceased and the heirs to or devisees of any interest in the allotment have not been determined, or, if determined, some or all of them cannot be located, the Secretary of the Interior may offer for sale leases for mining purposes to the highest responsible qualified bidder, at public auction, or on sealed bids, after notice and advertisement, upon such terms and conditions as the Secretary of the Interior may prescribe. The Secretary of the Interior shall have the right to reject all bids whenever in his judgment the interests of the Indians will be served by so doing, and to readvertise such lease for sale."

SEC. 4. No rent or other consideration for the use of land leased under this act shall be paid or collected more than 1 year in advance unless so provided in the lease.

SEC. 5. The Secretary of the Interior shall approve no lease pursuant to this act that contains any provision that will prevent or delay a termination of Federal trust responsibilities with respect to the land during the term of the lease.

SEC. 6. Nothing contained in this act shall be construed to repeal any authority to lease restricted Indian lands conferred by or pursuant to any other provision of law.

With the following committee amendment:

Page 2, line 3, after the word "of", strike out the word "the."

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

Mr. ASPINALL. Mr. Speaker, I ask unanimous consent to take from the

Speaker's table the bill S. 34, a similar bill, strike out all after the enacting clause and insert the provisions of the House bill just passed, and lay the House bill on the table.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Colorado?

There being no objection, the Clerk read the Senate bill, as follows:

Be it enacted, etc., That any restricted Indian lands, whether tribally or individually owned, may be leased by the Indian owners, with the approval of the Secretary of the Interior, for public, religious, educational, recreational, residential, or business purposes, including the development or utilization of natural resources in connection with operations under such leases, and for those farming purposes which require the making of a substantial investment in the improvement of the land for the production of specialized crops as determined by said Secretary. All leases so granted shall be for a term of not to exceed 25 years, but leases for public, religious, educational, recreational, residential, or business purposes with the consent of both parties may include provisions authorizing their renewal for an additional term of not to exceed 25 years, and all leases and renewals shall be made under such terms and regulations as may be prescribed by the Secretary of the Interior.

SEC. 2. Restricted lands of deceased Indians may be leased under this act, for the benefit of their heirs or devisees, in the circumstances and by the persons prescribed in the act of July 8, 1940 (54 Stat. 745; 25 U. S. C., 1946 edition, sec. 380).

SEC. 3. The act of March 3, 1909 (35 Stat. 783; 25 U. S. C. 396) is amended by inserting before the period at the end thereof the following proviso: "*Provided*, That if the said allottee is deceased and the heirs to or devisees of any interest in the allotment have not been determined, or, if determined, some or all of them cannot be located, the Secretary of the Interior may offer for sale leases for mining purposes to the highest responsible qualified bidder, at public auction, or on sealed bids, after notice and advertisement, upon such terms and conditions as the Secretary of the Interior may prescribe. The Secretary of the Interior shall have the right to reject all bids whenever in his judgment the interests of the Indians will be served by so doing, and to readvertise such lease for sale."

SEC. 4. No rent or other consideration for the use of land leased under this act shall be paid or collected more than 1 year in advance, unless so provided in the lease.

SEC. 5. The Secretary of the Interior shall approve no lease pursuant to this act that contains any provision that will prevent or delay a termination of Federal trust responsibilities with respect to the land during the term of the lease.

SEC. 6. Nothing contained in this act shall be construed to repeal any authority to lease restricted Indian lands conferred by or pursuant to any other provision of law.

The SPEAKER pro tempore. The Clerk will report the amendment.

The Clerk read as follows:

Strike out all after the enacting clause and insert the provisions of H. R. 7157 as amended.

The amendment was agreed to.

The bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H. R. 7157) was laid on the table.

FLOOD PROTECTION ON SAN JOAQUIN RIVER, CALIF.

The Clerk called the bill (H. R. 6066) authorizing modification of the project for flood protection on the San Joaquin River and tributaries, California.

There being no objection, the Clerk read the bill, as follows:

Be it enacted, etc., That the project for construction of channel improvement works and levee construction and reconstruction on the San Joaquin River and tributary channels, authorized by the Flood Control Act approved December 22, 1944, is hereby modified to provide that in lieu of furnishing flowage easements along the San Joaquin River upstream of the mouth of the Merced River as set forth in the report of the Chief of Engineers, published as Flood Control Committee Document No. 2, 78th Congress, responsible local interests may construct levees and channel improvements, as required, to protect such lands against floods, subject to approval by the Chief of Engineers, United States Army: *Provided*, That the flood hazard to downstream areas is not materially increased thereby, and that due consideration be given to the timing and sequence of construction of the parts of the project to be accomplished by local interests in proper relation to the development of flood control storage on the tributaries of the San Joaquin River: *And provided further*, That construction and maintenance of such levees and channel improvements be undertaken at no cost to the United States.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

EXTENSION OF MARINE WAR-RISK INSURANCE AUTHORITY

The Clerk called the bill (S. 741) to extend the provisions of title 12 of the Merchant Marine Act, 1936, relating to war-risk insurance, for an additional 5 years.

There being no objection, the Clerk read the bill, as follows:

Be it enacted, etc., That section 1214 of title 12 of the Merchant Marine Act, 1936, is amended by striking out "5" and inserting in lieu thereof "10."

With the following committee amendment:

Page 1, line 3, strike out "12" and insert "XII."

The committee amendment was agreed to.

The bill was ordered to be read a third time, was read the third time, and passed.

The title of the bill was amended so as to read: "An act to extend the provisions of title XII of the Merchant Marine Act, 1936, relating to war-risk insurance, for an additional 5 years."

A motion to reconsider was laid on the table.

INCLUDE SERVICES RENDERED STATES TOWARD RETIREMENT

The Clerk called the bill (S. 1041) to amend the Civil Service Retirement Act of May 29, 1930, as amended, to provide for the inclusion in the computation of accredited service of certain periods of service rendered States or instrumentalities of States, and for other purposes.

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1915 was prepared by a joint committee of the land-grant colleges and the Department of Agriculture to overcome certain personnel difficulties in cooperative work with the States and provides for the interchange of employees by the Department of Agriculture and State and local governments. Department employees interchanged would be either, first, on detail, entitled to salary and all other benefits from the Department, but subject to such State or local supervision as might be agreed upon; or, second, on leave without pay, with all rights of that status plus (a) such annual and sick leave as approved by the Secretary, (b) credit toward periodic and longevity step increases, (c) credit toward retirement upon payment of the appropriate percentage of State pay into the retirement funds, and (d) benefits under the Federal Employees' Compensation Act, unless they elected to receive similar State or local benefits. Transportation expenses in moving employees on either a detail or leave basis to their State assignments and back to their Federal official stations would be paid by the Department, but travel while on State assignment would not be paid by the Department."

17. CCC. Received from this Department a draft of proposed legislation to increase the borrowing authority of CCC from \$10 billion to \$12 billion; to Agriculture and Forestry Committee (p. 9567).

18. RECLAMATION. Concurred in the House amendment to S. 1177, for the relief of desert land entrymen whose entries are dependent upon percolating waters for reclamation (p. 9592). This bill will now be sent to the President.

The Interior and Insular Affairs Committee reported with amendment S. 926, to authorize the construction of the Ventura River reclamation project, Calif. (S. Rept. 1071); S. 1194, to provide for construction of the Red Willow Dam, Nebr. (S. Rept. 1066); S. 730, to authorize water compact between the States of Kans. and Okla. for the waters of the Ark. River (S. Rept. 1067); and S. 2442, to provide for Federal cooperation in non-Federal projects and for participation by non-Federal agencies in Federal projects (S. Rept. 1073) (p. 9570).

19. FOREIGN AID. Made its unfinished business H. R. 7224, the mutual security appropriation bill for 1956 (p. 9592).

20. WATER COMPACT. Passed as reported S. 2260, consenting to a compact among Ark., La., Okla., and Tex. for an apportionment of the waters of the Red River and its tributaries (p. 9590).

21. MINIMUM WAGE. Conferees were appointed on S. 2168, to raise the minimum wage to \$1 per hour (p. 9598). House conferees were appointed July 20.

22. PRICE SUPPORTS. The "Daily Digest" states that the Rules Committee reported without amendment S. Res. 123, authorizing additional funds of \$20,000 for the Agriculture and Forestry Committee to conduct field hearings on farm price support programs (no written report) (pp. D749-50).

23. SURPLUS PROPERTY. The Government Operations Committee ordered reported without amendment S. 2591, in lieu of S. 2367, a related bill, to amend the Federal Property and Administrative Services Act of 1949 with respect to utilization and disposal of excess and surplus property under the control of executive agencies (p. D753).

24. LEGISLATIVE PROGRAM. Sen. Clements announced that there would be a call of the calendar today (p. 9591).

BILLS INTRODUCED

25. FOREIGN TRADE. H. R. 7524, by Rep. Blitch, to amend the Tariff Act of 1930 to reduce the rate of duty on jute yarn when used wholly in the manufacture of backing for tufted rugs and carpets; to Ways and Means Committee (p. 9650).
26. PERSONNEL. H. R. 7525, by Rep. Buckley, to amend sec. 8 of the Civil Service Retirement Act of May 29, 1930, as amended; to Post Office and Civil Service Committee (p. 9650).
H. R. 7530, by Rep. Freylinghuysen, relating to reduction in personnel procedure and preference of veterans; to Post Office and Civil Service Committee (p. 9650).
H. R. 7531, by Rep. Freylinghuysen, relating to appeals by veterans under sec. 14 of the Veterans' Preference Act of 1944; to Post Office and Civil Service Committee (p. 9650).
27. RESEARCH. H. R. 7532, by Rep. Freylinghuysen, to provide for a Federal Advisory Council of Health in the Executive Office of the President in accordance with the recommendations of the Commission on Organization of the Executive Branch of the Government; to Interstate and Foreign Commerce Committee (p. 9650).
28. FORESTS. H. R. 7537, by Rep. Matthews, to establish the policy of Congress with respect to public use of the national forests and to provide for the development and maintenance of facilities for public use; to Agriculture Committee (p. 9650).
29. CCC. H. R. 7541, by Rep. Spence, to increase the borrowing power of Commodity Credit Corporation; to Banking and Currency Committee (p. 9650).
30. WATER RESOURCES. S. 2601, by Sen. Fulbright, authorizing the Secretary of the Interior to make a comprehensive survey and study of the ground-water resources of the Mississippi Valley embayment area; to Interior and Insular Affairs Committee (p. 9571). Remarks of author (pp. 9572-3).

ITEMS IN APPENDIX

31. APPLE PRICES. Rep. Quigley inserted an article from the Shippensburg (Pa.) News-Chronicle criticizing the President's veto of the bill to prohibit USDA from publishing predictions of the apple crop (p. A5376).
32. FOOD AND DRUGS. Sen. Wiley inserted a Milwaukee Journal editorial deploring the cut in funds of the FDA and expressed the hope that remedial action will be taken (p. A5347).
33. IMMIGRATION. Sen. Kennedy inserted an Italian News, Boston, Mass., article commending his proposal to create a Commission to study the McCarran-Walter Act and offer suggestions for changes therein (p. A5347).
34. MINIMUM WAGE. Extension of remarks of Rep. Bentley and insertion of a constituent's letter criticizing labor union practices (p. A5354).

a tributary of the Verdigris River, to Lake O' the Osages Dam and Lake O' the Osages, respectively.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Oklahoma.

The motion was agreed to; and the Senate proceeded to consider the bill, which had been reported from the Committee on Public Works with an amendment to strike out all after the enacting clause and to insert:

That the Hulah Reservoir back of Hulah Dam, which is located on the Caney River, a tributary of the Verdigris River in Oklahoma, shall hereafter be known as Lake O' the Osages and any law, regulation, document, or record of the United States in which such reservoir is designated or referred to under the name of Hulah Reservoir shall be held to refer to such body of water under and by the name of Lake O' the Osages.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill to change the name of Hulah Reservoir above Hulah Dam, Caney River, Okla. and Kans., to Lake O' the Osages."

ORDER FOR ADJOURNMENT TO 10:30 A. M. TOMORROW

Mr. CLEMENTS. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 10:30 a. m. tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR CALL OF THE CALENDAR

Mr. CLEMENTS. Mr. President, I should like to state at this time that immediately following the morning business tomorrow there will be a call of the calendar. This is at least somewhat in line with previous arrangements; but, for fear that it may be slightly out of line, I ask unanimous consent that following the morning hour tomorrow there be a call of the calendar of the bills to which there is no objection.

Mr. WILLIAMS. Mr. President, has the Senator from Kentucky discussed it with the minority leader?

Mr. CLEMENTS. I have discussed it with the minority leader. The acting majority leader and the minority leader have discussed it just as we discuss all other matters incident to the program. We are both in accord with desiring to push matters along as rapidly as we can, looking toward adjournment at the earliest possible date.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECORDATION OF SCRIP

Mr. CLEMENTS. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 887, House bill 2972.

The PRESIDING OFFICER. The bill will be stated by title for the information of the Senate.

The CHIEF CLERK. A bill (H. R. 2972) to require the recordation of scrip, lieu selection, and similar rights.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Kentucky.

The motion was agreed to; and the Senate proceeded to consider the bill, which had been reported from the Committee on Interior and Insular Affairs with amendments on page 2, line 9, after the word "within", to strike out "three" and insert "two"; in line 18, after the word "of", to strike out "three" and insert "two"; on page 3, after line 4, to insert:

SEC. 5. Within 30 days after the effective date of this act, the Secretary of the Interior shall cause to be published in the Federal Register a notice setting forth the recordation requirements of this act. Within 1 year after the effective date of this act the Secretary shall also cause notices of the recordation requirements of this act to be published in such newspapers, posted in such public offices, and given publicity by such other means as he deems feasible and appropriate for the dissemination of information concerning the recordation requirements of this act to persons who may have holdings or claims that are subject to such requirements.

And in line 17, to change the section number from "5" to "6."

The amendments were agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

Mr. LONG. Mr. President, I should like to say in connection with the bill that its purpose is to require that scrip on various public lands be filed as a condition of its validity for the future. There is a vast quantity of unrecorded scrip, giving the holders thereof the right to file on unappropriated and unclaimed public lands. This has caused great confusion for many years, and the purpose of the bill is to require that the script must be filed in order to keep alive the rights of the individuals to claim property by use of it.

If it should be found that the property claimed is not subject to the scrip, then, of, course, the Department will undertake to find some property which can be claimed by the individual or some other way in which an equitable adjustment can be arranged to settle the problem.

EXCHANGE OF EMPLOYEES OF THE UNITED STATES DEPARTMENT OF AGRICULTURE

Mr. CLEMENTS. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 1054, Senate bill 1915.

The PRESIDING OFFICER. The bill will be stated by title for the information of the Senate.

The CHIEF CLERK. A bill (S. 1915) to provide for further effectuating the act of May 15, 1862, through the exchange of employees of the United States Department of Agriculture and employees of State political subdivisions or educational institutions.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Kentucky.

The motion was agreed to; and the Senate proceeded to consider the bill.

Mr. CLEMENTS. Senate bill 1915 was prepared by a joint committee of the land-grant colleges and the Department of Agriculture to overcome certain personnel difficulties in cooperative work with the States and provides for the interchange of employees by the Department of Agriculture and State and local governments. Department employees interchanged would be either, first, on detail, entitled to salary and all other benefits from the Department, but subject to such State or local supervision as might be agreed upon; or, second, on leave without pay, with all rights of that status plus (a) such annual and sick leave as approved by the Secretary, (b) credit toward periodic and longevity step increases, (c) credit toward retirement upon payment of the appropriate percentage or State pay into the retirement fund, and (d) benefits under the Federal Employees' Compensation Act, unless they elected to receive similar State or local benefits. Transportation expenses in moving employees on either a detail or leave basis to their State assignments and back to their Federal official stations would be paid by the Department, but travel while on State assignment would not be paid by the Department.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted, etc., That the Congress hereby declares that the objectives of this act are to aid in the dissemination of useful information on subjects connected with agriculture and to provide a means whereby the Government of the United States and the several States may better cooperate in problems arising as a result of the interrelationships of their work in the field of agriculture.

SEC. 2. For the purposes of this act, the term "Department" shall be deemed to mean United States Department of Agriculture; "Secretary" shall mean Secretary of the United States Department of Agriculture; and "State" shall mean a State, county, city, municipality, land-grant college, or a college or university operated by any State or local government.

SEC. 3. In carrying out this act, the Secretary is authorized through cooperative agreements or otherwise to provide for the interchange of employees of the Department and employees of States. The period of assignment under such an interchange arrangement shall not exceed 2 years.

SEC. 4. Employees of the Department participating in an exchange of personnel as authorized in section 3 may be considered

during such participation to be (1) on detail to a regular work assignment of the Department, or (2) in a status of leave of absence from their positions in the Department. Employees who are considered to be detailed shall be entitled to the same salary and benefits to which they would otherwise be entitled and shall remain employees of the Department for all other purposes except that the supervision of their duties during the period of detail may be governed by agreement between the Department and the State involved. Employees who are in a leave-of-absence status as provided herein shall be carried on leave without pay: *Provided*, That they may be granted annual leave to the extent authorized by law and may be granted authorized sick leave only in circumstances considered by the Secretary to justify approval of such leave. Except as otherwise provided in this act, such employees shall have the same rights, benefits, and obligations as employees generally who are in such leave status but notwithstanding any other provision of law such employees shall be entitled to credit the period of such assignment (1) toward periodic and longevity step increases, and (2) upon payment into the retirement fund of the percentage of their State salary which would have been deducted from a like Federal salary for the period of such assignment, to credit such period as service within the meaning of the Civil Service Retirement Act. Any employee who participates in an exchange under the terms of this section who suffers disability or death as a result of personal injury arising out of and in the course of an exchange, or sustained in the performance of duties in connection therewith shall be treated, for the purposes of the Federal Employees' Compensation Act, as amended (5 U. S. C., sec. 790), as though he were an employee, as defined in such act, who had sustained such injury in the performance of such duty, but shall not receive benefits under that act for any period for which he elects to receive similar benefits from a State agency.

SEC. 5. Appropriations of the Department shall be available, in accordance with Standard Government Regulations, as amended, for the expenses of travel of employees assigned to States on either a detail or leave basis, expenses of transportation of their immediate families and expenses of transportation of their household goods and personal effects to the location of the posts of assignment and for such expenses for the return of employees to their official stations, but shall not be available for expenses of travel of the employees during such period of assignment.

SEC. 6. Employees of States who are assigned to the Department under authority of this act may (1) be given appointments in the Department covering the periods of such assignments, or (2) be considered to be on detail to the Department. Appointments of persons so assigned may be made without regard to the civil-service laws or regulations. Persons given appointment in the Department shall be paid at rates of compensation in accordance with the Classification Act of 1949, as amended. State employees who are assigned to the Department without appointment shall not be considered to be employees of the Department, except as provided in section 7, nor shall they be paid a salary or wage by the Department during the period of their detail. The supervision of the duties of such employees during the assignment may be governed by agreement between the Department and the State involved.

SEC. 7. Any State employee who is given an appointment while assigned to the Department or who is assigned to the Department without appointment and who suffers disability or death as a result of personal injury arising out of and in the course of such assignment, or sustained in the performance of duties in connection therewith

shall be treated, for the purpose of the Federal Employees' Compensation Act as amended (5 U. S. C., sec. 790), as though he were an employee, as defined in such act, who had sustained such injury in the performance of such duty, but shall not receive benefits under that act for any period for which he elects to receive similar benefits as a State employee.

SEC. 8. The appropriations of the Department shall be available in accordance with the Standardized Government Travel Regulations, Travel Expense Act for 1949, for the payment of expenses of travel, for persons assigned to, but not given appointments by, the Department under authority of this act during the periods of such assignments on the same basis as if they were employees of the Department.

AUTHORIZATION FOR THE SECRETARY TO RECEIVE MESSAGES FROM THE HOUSE DURING ADJOURNMENT

Mr. CLEMENTS. Mr. President, I ask unanimous consent that during the adjournment of the Senate the Secretary be authorized to receive messages from the House.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CLEMENTS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

Mr. CLEMENTS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MUTUAL SECURITY APPROPRIATIONS, 1955

Mr. CLEMENTS. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 1040, H. R. 7224.

The PRESIDING OFFICER. The bill will be stated by title for the information of the Senate.

The CHIEF CLERK. A bill (H. R. 7224) making appropriations for mutual security for the fiscal year ending June 30, 1956, and for other purposes.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Kentucky.

The motion was agreed to; and the Senate proceeded to consider the bill, which had been reported from the Committee on Appropriations with amendments.

Mr. ELLENDER. Mr. President, is it the intention of the acting majority leader to have the bill considered today?

Mr. CLEMENTS. It is not the intention of the acting majority leader to have the bill considered today, nor is it my intention to have it considered until after the call of the calendar of unobjectioned-to bills tomorrow.

It is planned to have the Senate convene at 10:30 tomorrow morning, in the hope that the business of the morning hour and the call of the calendar of bills to which there is no objection, as well, can be concluded by 12 o'clock.

RELIEF OF CERTAIN DESERT LAND ENTRYMEN

The PRESIDING OFFICER (Mr. KENNEDY in the chair) laid before the Senate the amendment of the House of Representatives to the bill (S. 1177) for the relief of desert land entrymen whose entries are dependent upon percolating waters for reclamation, which was, to strike out all after the enacting clause and insert:

That the requirement of section 1 of the Desert Land Act of March 3, 1877 (19 Stat. 377), that the right to the use of water by a desert land entryman "shall depend upon bona fide prior appropriation" shall be waived in the case of all desert land entries which have heretofore been allowed and are subsisting on the effective date of this act, which are dependent upon percolating waters for their reclamation, and which are situated in the State of Arizona under the laws of which the percolating waters upon which the entries are dependent are not subject to the doctrine of prior appropriation but are usable under State law for irrigation and reclamation purposes.

Mr. ANDERSON. Mr. President, I move that the Senate concur in the amendment of the House.

The motion was agreed to.

THE NARCOTICS PROBLEM

Mr. SPARKMAN. Mr. President, I have in my hand a series of articles from the Evening Star of Washington, written by Miss Miriam Ottenberg, relative to the hearings which are being conducted by the Senate Judiciary Subcommittee on Narcotics, under the chairmanship of our distinguished colleague, the Senator from Texas [Mr. DANIEL]. I ask unanimous consent to have these articles printed in the body of the RECORD at this point, for the purpose of further directing attention of Senators both to the need for such an intensive investigation into the narcotics problem and also to the comprehensive and constructive approach of the subcommittee.

Several officials have already testified that the activities of this subcommittee have spurred them on to positive action to halt the illicit narcotics traffic, and to get the drug addicts off the streets and confined in appropriate institutions for treatment. Moreover, I was surprised, and I believe that most of the other Senators will be equally surprised, to learn of the great number of improvements which could be made in existing Federal law for controlling the traffic in illicit narcotics and for dealing with narcotics addicts. Much of the legislation now on the statute books is obviously too weak and too cumbersome to deal swiftly and effectively with narcotics traffickers.

For example, I note from these articles that the District of Columbia alone needs at least a dozen new laws, or amendments to old laws, to cope with the narcotics problem here in the Nation's Capital. Mr. Harry Anslinger, United States Commissioner of Narcotics, reports that there are more than 950 known addicts on the streets of Washington.

In conclusion, I wish to congratulate the chairman of this subcommittee, the other members of the subcommittee, and the staff, for the work they are doing. In

Public Law 226 - 84th Congress
Chapter 548 - 1st Session
S. 1177

AN ACT

All 69 Stat. 491.

For the relief of desert land entrymen whose entries are dependent upon
percolating waters for reclamation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the requirement of section 1 of the Desert Land Act of March 3, 1877 (19 Stat. 377), that the right to the use of water by a desert land entryman "shall depend upon bona fide prior appropriation" shall be waived in the case of all desert land entries which have heretofore been allowed and are subsisting on the effective date of this Act, which are dependent upon percolating waters for their reclamation, and which are situated in the State of Arizona under the laws of which the percolating waters upon which the entries are dependent are not subject to the doctrine of prior appropriation but are usable under State law for irrigation and reclamation purposes.

Desert land
entrymen.
Relief.
43 USC 321.

Approved August 4, 1955.

